TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 228.

LUTHER CLAY SLAVENS, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED APRIL 21, 1904.

(19,303.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 26, 1904.

1 In the United States Court of Claims.

LUTHER CLAY SLAVENS, Claimant,
versus
THE UNITED STATES. } No. 21973.

I.—*Petition and Exhibits. Filed July* 17, 1900.

To the honorable the justices of the Court of Claims:

The above named claimant, Luther Clay Slavens, respectfully represents:

First. That he is a citizen of the United States, a resident of the city of Kansas City in the State of Missouri, and brings this his suit in his own right in respect to the matters hereinafter set forth.

Second. That heretofore, to-wit, on the 15th day of September, 1892, the then Postmaster General of the United States, acting on behalf of the United States, advertised for proposals for transporting the mails in various cities, and among others, on route No. 204001, being the covered regulation wagon mail messenger transfer and mail station service, at the city of Boston, Massachusetts, a copy of which said advertisement, so far as the same relates to proposals for the route last aforesaid and the instructions to bidders, is hereto annexed and made a part hereof and marked "Exhibit A."

Third. That pursuant to said advertisement and the several matters therein set forth and contained, this claimant made and
2 filed with the department a proposal for the performance of said service, consisting of transporting the mails at and in said city of Boston as aforesaid, for the period named in said advertisement, to-wit: from the first day of July, 1893, to June 30, 1897, inclusive, naming as the compensation to be received by claimant therefor, the sum of $49,516.00 per annum; that said bid was duly accepted by the department, and thereafter, to-wit: on the 21st day of December, 1892, claimant entered into a contract with the United States for the performance of said service during the period aforesaid; a true and correct copy of which said contract is hereto annexed and made a part hereof, and marked "Exhibit B," and that thereupon, and thereafter, this claimant engaged in the carrying of the mails aforesaid under and in pursuance of said contract.

By the terms of said contract it was provided that said claimant should at and in said city of Boston, take the mail from and deliver it into the post offices, the mail stations, and the cars, at such points and at such hours, under the direction of the postmaster at Boston, approved by the Postmaster General, as will secure dispatches and connections and facilitate distribution.

And it was also provided in said contract that the Postmaster General might annul said contract for repeated failures, for vio-

lating the postal laws, for disobeying instructions of the Post Office Department, and for other reasons therein specified; but claimant avers that during the time he performed such service under said contract, none of the reasons therein mentioned for annulling such contract have existed; that he faithfully and satisfactorily performed his contract on his part in every respect, and that the defendant never claimed or attempted to claim anything to the contrary, and never annulled, or attempted to annul, said contract for any of the reasons authorizing it so to do by the terms of said contract.

And this claimant further states that said contract also pro-
3 vided that said Postmaster General might increase, decrease or extend the service to be rendered under said contract, but without any change of pay therefor; and further, that said Postmaster General might discontinue the *entire* service whenever the public interest, in his judgment, should require such discontinuance.

And claimant further shows that thereafter, and during the term of the said contract in this paragraph referred to, the defendant, under date of December 9th, 1895, ordered claimant to discontinue the service so being duly performed by him as aforesaid on said route No. 204001, a true copy of which order last aforesaid is hereunto annexed, made a part hereof, and marked "Exhibit C," and that pursuant to said order this claimant was compelled to discontinue the performance of said service on January 31st, 1896.

The claimant further shows that said order on him to discontinue said service under his said contract, was not made on account of any alleged neglect or default on the part of this claimant in the performance of his said contract, but on the face of said order, and as disclosed by other communications between defendant and claimant in connection therewith, the right was asserted by the defendant to so order the claimant to discontinue the said service under the supposed authority of the clause contained in said contract providing "that the Postmaster General may discontinue the entire service whenever the public interest, in his judgment, shall require such discontinuance;" but claimant avers the fact to be that there was in fact no discontinuance whatever of the service in carrying the mails on the route aforesaid, but that the real reason for said order on claimant to discontinue said service was that during the contract period aforesaid, and prior to said order on claimant to discontinue said service, the defendant had decreased the amount of service to be performed by claimant under said contract, and which said decrease of service was, as expressly provided by the contract aforesaid, to be without decrease of pay to this claimant therefor, and that thereafter, and while the contract was still
4 in full force and effect, and in order to have the remaining service performed at a less rate of compensation than was provided by said contract, and for no other reason, the defendant, in violation of the rights of claimant, and in express violation and disregard of said contract then existing between the claimant and

defendant, ordered and compelled claimant to discontinue the said service, although immediately after said order to claimant to discontinue said service was served on him, the said defendant relet the same service to another for the balance of said contract period, which said service was thereafter continuously performed by such other, from the time claimant was thus compelled to cease performing said service, and during the remainder of the contract period aforesaid, so that there was in fact, no discontinuance of such service, but the same was continued right along by another contractor under a new contract from the time claimant was thus wrongfully compelled to cease performing such service until the end of the period for which claimant had contracted to perform said service.

By reason of which acts and conduct of said defendant in this regard claimant avers that he has sustained damage and loss in the sum of $32,128.00, covering the period of his said contract from the date of said alleged discontinuance thereof, namely, January 31st, 1896, to the termination of said contract period, namely, June 30th, 1897.

Claimant further shows in this connection that said order of defendant upon him to discontinue said service above referred to, and the enforcement thereof by the said defendant, was not acquiesced in or assented to by him, but on the contrary, was expressly against his consent and protest.

Claimant further shows that during the time he performed the service under said contract for transporting the mails at the city of Boston, Massachusetts, above mentioned, the defendant required him to transport the said mails between the mailing room and the basement of the general post office at said city, and the street railway line on Water street in said city, from the 1st day of June, 1895, to the 1st day of February, 1896, covering a period of 35 weeks, which service claimant avers was not included in the requirements of said contract, but was so required by the defendant to be by him performed and was in fact performed by him under protest, and that the reasonable value of such service was and is the sum of $30.00 per week, amounting to the sum of $1,050.00, for the period aforesaid, no part of which sum has ever been paid to claimant, but the whole thereof remains and is still due and owing from the defendant.

He further avers that during the term of said contract, he was also required by the defendant to transport the mails aforesaid between what is known as the Back Bay post office and the Brook Line post office, the latter post office being outside the city limits of Boston, Massachusetts, and that said service was not embraced within nor required to be performed by the terms and conditions of his said contract; that said service so required as aforesaid was in fact performed by the claimant under protest during the period from February 12th, 1894, to August 14th, 1894, and the same was and is reasonably worth the sum of $650.00, no part of which said sum has

ever been paid to this claimant, but the whole thereof remains and is due and owing from the defendant.

Fourth. That heretofore, to-wit: on the 15th day of September, 1892, the then Postmaster General of the United States, acting on behalf of the United States, also invited proposals for transporting the mail on route No. 207,001, being the covered regulation wagon mail messenger, transfer and mail station service at the city of Brooklyn, State of New York, a copy of which said advertisement, so far as the same relates to said route last aforesaid, and so far as not already set forth in Exhibit A aforesaid, is hereunto annexed, made a part hereof, and marked "Exhibit D."

That pursuant to said advertisement and of the matters and
6 things therein set forth and contained, claimant made and filed with the department a proposal for the performance of said service, consisting of carrying the mails in said city of Brooklyn for the period named in said advertisement, from the 1st day of July, 1893, to the 30th day of June, 1897, inclusive, naming as the compensation to be received by claimant therefor the sum of $18,934.00 per annum; that said bid was duly accepted by said department, and thereafter, to-wit: on the 21st day of December, 1892, claimant entered into a contract with the United States for the performance of said service during the period aforesaid, a true and correct copy of which said contract is hereto annexed, made a part hereof, and marked "Exhibit E," and thereupon claimant engaged in the carrying of the mails aforesaid under and in pursuance of said contract.

By the terms of said contract it was provided that said claimant should at and in said city of Brooklyn, take the mail from and deliver it into the post offices, the mail stations, and the cars, at such points and at such hours, under the direction of the postmaster at Brooklyn, approved by the Postmaster General, as will secure dispatches and connections and facilitate distribution.

And it was also provided in said contract that the Postmaster General might annul said contract for repeated failures, for violating the postal laws, for disobeying instructions of the Post Office Department, and for other reasons therein specified; but claimant avers that during the time he performed such service under said contract, none of the reasons therein mentioned for annulling such contract have existed; that he faithfully and satisfactorily performed his contract on his part in every respect, and that the defendant never claimed or attempted to claim anything to the contrary, and never annulled, or attempted to annul, said contract for any of the reasons authorizing it to do so by the terms of said contract.

And this claimant further states that said contract also provided
7 that said Postmaster General might increase, decrease or extend the service to be rendered under said contract, but without any change of pay therefor; and further, that said Postmaster General might discontinue the *entire* service whenever

the public interest, in his judgment, should require such discontinuance.

And claimant further shows that thereafter, and during the time of the said contract last above mentioned, the defendant, under date of January 21st, 1896, ordered claimant to discontinue the service so being duly performed by him as aforesaid on said route No. 207001, a true and correct copy of which order last aforesaid is hereunto annexed, made a part hereof, and marked "Exhibit F," and that pursuant to said order, this claimant was compelled to discontinue the performance of said service on the first day of March, 1896.

Claimant further shows that said order on him to discontinue said service under his said contract was not made on account of any alleged neglect or default on his part in the performance of said contract, but on the face of said order, and as disclosed by other communications between defendant and claimant in connection therewith, the right was asserted by the defendant to so order and compel this claimant to discontinue said service under the supposed authority of the clause contained in said contract providing "that the Postmaster General may discontinue the entire service whenever the public interest, in his judgment, shall require such discontinuance;" but claimant avers the fact to be that there was no discontinuance whatever of the service in carrying the mails on the route aforesaid, but that the real reason for said order on claimant to discontinue said service and for the enforcement thereof, was that during the contract period aforesaid, and prior to said order on claimant to discontinue said service, the defendant had decreased the amount of service required to be performed by claimant under said contract, and which said decrease of service was, as expressly provided by the contract aforesaid, to be without decrease of pay to this claim-
8 ant, and that thereafter, and while this contract was still in full force and effect, and in order to have the remaining service performed at a less rate of compensation than was provided by said contract, and for no other reason, the defendant, in violation of the contract then so existing between claimant and defendant, ordered and compelled claimant to discontinue said service, although immediately after said order of defendant to discontinue said service was served on claimant, the defendant relet the same service to another for the balance of said contract period, which said service was thereafter continuously performed by such other from the time claimant was thus compelled to cease performing such service, during the remainder of the contract period aforesaid, so that there was in fact no discontinuance of said service, but the same was continued right along by another contractor under a new contract from the time claimant was thus wrongfully compelled to cease performing said service until the end of the time for which claimant had contract to perform said service.

By reason of all which acts and conduct of defendant in this regard, claimant avers he has sustained damage and loss in the sum of $16,064.00, covering the period of his said contract from the date

of said alleged discontinuance thereof, March 1st, 1896, to the termination of said contract period, namely, June 30, 1897.

Plaintiff further shows in this connection that said order of defendant upon him to discontinue said service above referred to, and the enforcement of said order upon him were not acquiesced in or assented to by him, but on the contrary were expressly against his consent and protest.

Claimant further shows that in the performance of the service of transporting the mails on route No. 207001 at the city of Brooklyn, New York, during the contract period, to-wit: beginning July 1st, 1893, and ending June 30, 1897, claimant was required by the defendant to perform, and did in fact perform, under pro-
9 test, the following service, which was not embraced within, nor required by, the terms of said contract, to-wit:

(*a.*) Transfers between station E and Manhattan crossing, being a distance of 0.38 miles, 36 trips per week, during the period from December 18, 1895, to March 1, 1896, and that said service was and is reasonably worth the sum of 30 cents per trip, said services aggregating the sum of.....	$112.53
(*b.*) Transfers between Brooklyn Heights Railway street line, and said station E, a distance of 0.23 miles, 119 trips per week, during the period from December 18, 1895, to March 1, 1896, and which service was and is reasonably worth the sum of 25 cents per trip, aggregating the sum of.....	310.00
(*c.*) Transfers between station G and Brooklyn Heights Railway street line, a distance of 0.06 miles, 118 trips per week, during the period from December 18, 1895, to March 1, 1896, and which service was and is reasonably worth the sum of 20 cents per trip, aggregating the sum of.....	245.92
(*d.*) Transfers between station W and Brooklyn Heights Railway street line, a distance of 0.08 miles, 232 trips per week during the period from December 18, 1895, to March 1, 1896, and which service was and is reasonably worth the sum of 20c. per trip, aggregating the sum of.....	483.49
(*e.*) Transfers between Long Island City post office and Brooklyn Heights Railway street line, a distance of 0.61 miles, 36 trips and back per week, during the period from December 18, 1895, and March 1, 1896, which service was and is reasonably worth the sum of 40c. per trip, aggregating the sum of...	150.05
(*f.*) Transfers between Brooklyn general post office and street railway line at corner of Johnson and Ful-
10 ton streets (destined to station C), a distance of 0.10 miles, 132 trips per week, during the period	

from April 24, 1895, to March 1, 1896, and which service was and is reasonably worth the sum of 25c. per trip, aggregating the sum of..... 829.48

(*g.*) Transfer between Brooklyn general post office and street railway line at the corner of Johnson and Fulton streets (destined to Flatbush and Flathead post offices), a distance of 0.10 miles, 72 trips per week, during the period from January 1, 1895, to March 1, 1896, and which service was and is reasonably worth the sum of 20c. per trip, aggregating the sum of..... 856.80

(*h.*) Transfers between Brooklyn general post office and street railway line at the corner of Johnson and Fulton streets (destined to Bay Ridge and Fort Hamilton post offices), a distance of 0.02 miles, 48 trips a week, during the period from May 21, 1895, to March 1, 1896, which said service was and is reasonably worth the sum of 20c. per trip, aggregating the sum of..... ..... 389.38

(*i.*) Transfers between mailing room and basement of Brooklyn general post office, and Atlantic Avenue street railway line, a distance of 0.01 miles, 50 trips per week, during the period from June 25, 1894, to March 1, 1896, and which said service was and is reasonably worth the sum of $15 per week, aggregating the sum of..... ..... 1,313.40

That the said amounts last above mentioned aggregate the sum of $4,691.05

and that the whole thereof remains and is justly due and owing from the defendant to the claimant, no part of which has ever been paid.

Fifth. That on or about the 15th day of September, 1893, the then Postmaster General of the United States, acting for and
11 on behalf of the United States, advertised for proposals for transporting the mails in various cities, and among others on route No. 257001, being the covered regulation mail messenger, transfer and mail station service at the city of Omaha, State of Nebraska, a copy of which advertisement, so far as the same relates to the route last aforesaid, and so far as not already set forth in Exhibit A aforesaid, is hereunto annexed and made a part hereof and marked "Exhibit G."

That in pursuance of said advertisment and the matters therein set forth and contained, claimant, under the name of Luther Clay Slavens, Jr., filed with the department a proposal for the performance of said service, consisting of carrying the mails in said city of Omaha for the period named in said advertisment, to-wit: from the first day of July, 1894, to the 30th day of June, 1898, inclusive,

naming as the compensation to be received by claimant therefor the sum of $3,780.00 per annum; that said bid was duly accepted by the department, and that thereafter, to-wit: on the 21st day of December, 1893, the claimant, under the name of Luther Clay Slavens, Jr., entered into a contract with the United States for the performance of said service, during the period aforesaid, a true and correct copy of which said contract is hereto annexed, and made a part hereof and marked "Exhibit H," and that thereupon this claimant engaged in the carrying of the mails aforesaid under and in pursuance of the contract aforesaid.

That said contract provided that said claimant should perform the said mail service at and in the said city of Omaha, and required him to take the mail from and deliver it into the post-offices, the mail stations and cars at such points and at such hours, under the direction of the postmaster at Omaha, Nebraska, approved by the Postmaster General, as will secure dispatches and connections, and facilitate distributions.

Claimant further shows that during the period of his contract aforesaid, covering the transportation of mails on route No.
12 257001, at said city of Omaha, covering the period from July 1, 1894, to June 30, 1898, he was by the defendant required to and did in fact perform service under protest, not embraced within nor required by the terms of said contract as follows, to-wit:

(*a.*) Transfers between Omaha post office and South Omaha street railway line at 14th and Dodge streets, 14 round trips per day, during the period from March 25, 1895, to June 30, 1898, 169 weeks, and which service was and is reasonably worth the sum of $15 per week, aggregating the sum of...	$2,535.00
(*b.*) Transfers between South Omaha line of street railway and Dodge Street line of street railway, at 14th and Dodge streets, 14 transfers per day during the period from April 25th, 1895, to June 30th, 1898, 165 3-7 weeks, and which service was and is reasonably worth the sum of $15 per week, aggregating the sum of.....	2,481.42
(*c.*) Transfers between Union Depot street railway line and post office, 14 round trips per day during the period from April 25th, 1895, to June 30th, 1898, 165 3-7 weeks, and which service was and is reasonably worth the sum of.....	2,481.42
(*d.*) Transfers between Union Depot street railway line at 10th and Mason streets, and the Union depot, 14 round trips per day, during the period from April 25th, 1895, to June 30th, 1898, 165 3-7 weeks, aggregating the sum of.....	2,841.42
Claimant says that the items last above referred to, aggregating the sum of.....	$9,979.26

are justly due and owing to claimant from defendant for the service herein stated, and that no part thereof has been paid to him.

13 Sixth. Claimant further avers that he is justly entitled, as hereinbefore shown and set forth, to the moneys herein claimed to be due and owing from the United States to him, after allowing all just credits and set offs; that no assignment or transfer of the claims hereinbefore set forth, or any part thereof, or any interest thereunder, has been made to any one whomsoever by this claimant, or by any one in his behalf, and that he has at all times borne true allegiance to the United States.

Wherefore, the premises considered, this claimant demands judgment against the United States in the sum of sixty-four thousand, five hundred and sixty-two dollars and thirty-one cents ($64,562.31).

LUTHER CLAY SLAVENS, *Claimant.*

JEREMIAH M. WILSON,
Attorney for Claimant.

STATE OF MISSOURI, }
County of Jackson, } ss:

Before me, the undersigned, personally appeared Luther Clay Slavens, the claimant in the foregoing petition named, who being by me first duly sworn, on oath, says that he has read the foregoing petition by him subscribed, and is acquainted with the contents thereof; that the matters and things therein stated are true as he verily believes; that he, as such claimant aforesaid, is justly

14 entitled, as shown in the petition, to the moneys therein claimed to be due and owing to him from the United States, after allowing all just credits and set-offs; and that no assignment or transfer of the claims therein set forth, or any part thereof, or interest therein, has been made by him or by any one whomsoever on his behalf.

LUTHER CLAY SLAVENS.

Subscribed and sworn to before me this 12th day of July, 1900.

PORTER H. HOVEY,
[SEAL.] *Notary Public, Jackson County, Mo.*

My term expires May 26, 1901.

Post office address of claimant: Luther Clay Slavens, Kansas City, Mo.

Post office address of attorney for claimant: Jeremiah M. Wilson, 1416 F St. N. W., Washington, D. C.

15 "EXHIBIT A."

Proposals for Covered Regulation Wagon Mail Messenger, Transfer, and Mail Station Service.

POST OFFICE DEPARTMENT,
WASHINGTON, D. C., *September* 15, 1892.

Proposals will be received at the contract office of this department until 4 p. m. of December 1, 1892, for carrying the mails of the United States in the covered regulation wagons prescribed by the department, on the routes herein specified, being covered regulation wagon mail messenger, transfer, and mail station service in the cities hereinafter named, between the post offices and railroad stations, between the post offices and steamboat landings, between the post offices and mail stations, and between the several railroad stations, steamboat landings, and mail stations, as prescribed herein, for the term from July 1, 1893, to June 30, 1897, viz:

Boston, Mass.,
Providence, R. I.,
Brooklyn, N. Y.,
Buffalo, N. Y.,
New York, N. Y.,
Jersey City, N. J.
Philadelphia, Pa.,
Pittsburgh, Pa.,
Baltimore, Md.,
Washington, D. C.,
Richmond, Va.,

Decisions announced on or before December 21, 1892.

Contracts to be returned to the department, duly executed, within thirty days from date of acceptance of proposals.

16 *Route No.* 204001.

Covered regulation wagon mail messenger, transfer, and mail station service at Boston, Mass.

Schedule of Service in Operation August 15, 1892.

Mail messenger service.

From the general post office to the following named railroad stations or steamboat landings.	Distance.	Number of trips daily, except Sunday.	Number of trips on Sunday.	Number of additional trips a week.	Total number of trips a week.	Running time allowed from July 1, 1893.
	Miles.					*Min.*
Boston and Albany railroad	0.62	73	14	.....	452	20
Boston and Maine railroad (Southern division)	0.74	44	6	.....	270	20
Boston and Maine railroad (Eastern division)	0.74	50	9	.....	309	20
Boston and Maine railroad (Western division)	0.55	43	1	.....	259	20
Fitchburg railroad	0.78	25	2	.....	158	20
New York and New England railroad	0.35	16	2	.....	98	20
Old Colony railroad (Central division)	0.53	49	5	.....	299	20
Old Colony railroad (Providence division)	0.89	43	6	.....	264	25
Boston, Revere Beach and Lynn railroad	6.40	8	.....	.....	48	20
International steamship line (Commercial wharf)	0.60	.....	.....	.....	*4	20

To the general post office from the following named railroad stations or steamboat landings.	Distance.	Number of trips daily, except Sunday.	Number of trips on Sunday.	Number of additional trips a week.	Total number of trips a week.	Running time allowed from July 1, 1893.
	Miles.					*Min.*
Boston and Albany railroad	0.62	49	19	.....	313	20
Boston and Maine railroad (Southern division)	0.74	37	4	.....	226	20
Boston and Maine railroad (Eastern division)	0.74	40	9	.....	249	20
Boston and Maine railroad (Western division)	0.55	37	4	.....	226	20
Fitchburg railroad	0.78	20	3	.....	123	20
New York and New England railroad	0.35	11	2	.....	68	20
Old Colony railroad (Central division)	0.53	38	3	.....	231	20
Old Colony railroad (Providence division)	0.89	36	2	.....	218	25
Boston, Revere Beach and Lynn railroad	0.40	7	.....	.....	42	20
International steamship line (Commercial wharf)	0.60	.....	.....	.....	†4	20

*On Mondays, Tuesdays, Thursdays, and Fridays.
†On Tuesdays, Thursdays, Fridays, and Sundays.

17 *Route No.* 204,001—Continued.

Transfer service.

From the following named railroad stations.	To the following named railroad stations.	Distance.	Number of trips daily, except Sunday.	Number of trips on Sunday.	Number of additional trips a week.	Total number of trips a week.	Running time allowed from July 1, 1893.
		Miles.					*Min.*
Boston and Albany railroad.....	Boston and Maine railroad (Southern division).	1.40	6	.....	.....	36	20
Boston and Albany railroad.....	Boston and Maine railroad (Eastern division).	1.40	7	4	.....	46	20
Boston and Albany railroad.....	Boston and Maine railroad (Western division).	1.20	6	.....	.....	36	20
Boston and Albany railroad.....	Fitchburg railroad.....	1.40	2	.....	.....	12	20
Boston and Albany railroad.....	Old Colony railroad (Central division).	0.09	8	.....	.....	48	5
Boston and Albany railroad.....	Old Colony railroad (Providence division).	0.56	3	.....	.....	18	10
Boston and Albany railroad.....	New York and New England railroad.	0.25	1	.....	.....	6	10
Boston and Maine railroad (Southern division).	Boston and Albany railroad.....	1.40	4	.....	.....	24	20
Boston and Maine railroad (Southern division).	Boston and Maine railroad (Eastern division).	0.14	5	.....	.....	30	5
Boston and Maine railroad (Southern division).	Fitchburg railroad.....	0.15	1	.....	.....	6	10
Boston and Maine railroad (Eastern division).	Boston and Maine railroad (Southern division).	0.14	3	.....	.....	18	5
Boston and Maine railroad (Eastern division).	Boston and Maine railroad (Western division).	0.19	3	.....	.....	18	10
Boston and Maine railroad (Eastern division).	Fitchburg railroad.....	0.15	3	.....	.....	18	5
Boston and Maine railroad (Eastern division).	Boston and Albany railroad.....	1.40	9	3	.....	57	20
Boston and Maine railroad (Eastern division).	New York and New England railroad.	1.13	1	.....	.....	6	15
Boston and Maine railroad (Western division).	Boston and Maine railroad (Eastern division).	0.19	2	.....	.....	12	10
Old Colony railroad (Central division).	Boston and Albany railroad.....	0.09	8	.....	.....	48	5
Old Colony railroad (Providence division).	Boston and Maine railroad (Eastern division).	1.31	3	.....	.....	18	20
Old Colony railroad (Providence division).	Boston and Maine railroad (Western division).	1.12	3	.....	.....	18	20
Old Colony railroad (Providence division).	Boston and Maine railroad (Southern division).	1.31	2	.....	.....	12	20
Old Colony railroad (Providence division).	Old Colony railroad (Central division).	0.71	2	.....	.....	12	20
Old Colony railroad (Providence division).	Fitchburg railroad.....	1.42	1	.....	.....	6	20
Old Colony railroad (Providence division).	Boston and Albany railroad.....	0.56	4	.....	.....	24	10
Fitchburg railroad.....	Boston and Maine railroad (Eastern division).	0.15	2	.....	.....	12	5
Fitchburg railroad.....	Boston and Maine railroad (Western division).	0.34	1	.....	.....	6	10
Fitchburg railroad.....	Boston and Maine railroad (Southern division).	0.23	1	.....	.....	6	10
Fitchburg railroad.....	Old Colony railroad (Providence division).	1.42	1	.....	.....	6	30

18 *Route No.* 204,001—Continued.

Mail station service.

From—	By—	To—	Distance.	Number of trips daily, except Sunday.	Number of trips on Sunday.	Total number of trips a week.	Running time allowed from July 1, 1903.
			Miles.				*Min.*
General post office	Huntington Avenue R. R. station and Cambridgeport.	Cambridge	3.75	1	.....	6	52
Cambridge	Cambridgeport and Huntington Avenue R. R. station.	General post office	3.75	1	.....	6	52
General post office	Cambridgeport	Cambridge	3.25	6	1	37	45
Cambridge	Cambridgeport	General post office	3.25	6	1	37	45
General post office	Charlestown	Chelsea	3.00	7	1	43	45
Chelsea	Charlestown	General post office	3.00	7	1	43	45
General post office	Station A	Roxbury	2.50	10	1	61	45
Roxbury	Station A	General post office	2.50	10	1	61	45
General post office	East Cambridge	Somerville	2.50	8	1	49	45
Somerville	East Cambridge	General post office	2.50	8	1	49	45
General post office	.....	South Boston	1.75	9	1	55	30
South Boston	.....	General post office	1.75	9	1	55	30
General post office	.....	East Boston	1.25	10	1	61	30
East Boston	.....	General post office	1.25	10	1	61	30
General post office	.....	Back Bay	1.50	8	1	49	18
Back Bay	.....	General post office	1.50	8	1	49	18
Cambridge	.....	North Cambridge	0.75	1	.....	6	15
North Cambridge	.....	Cambridge	0.75	1	.....	6	15
Cambridgeport	Somerville	East Cambridge	1.50	1	.....	6	23
East Cambridge	Somerville	Cambridgeport	1.50	1	.....	6	23
Brighton	.....	Railroad station	1.00	7	1	43	15
Railroad station	.....	Brighton	1.00	7	1	43	15
General post office	Back Bay station and Station A.	Roxbury	2.50	4	.....	24	45
Roxbury	Station A and Back Bay station.	General post office	2.50	4	.....	24	45
General post office	Huntington Avenue R. R. station and Station A.	Roxbury	2.50	1	.....	6	45
Roxbury	Station A and Huntington Avenue R.R. station.	General post office	2.50	1	.....	6	45
Dorchester	.....	Harrison Sq. depot	0.66	14	2	86	10
Harrison Sq. depot	.....	Dorchester	0.66	14	2	86	10
Winthrop	.....	Railroad station	0.33	3	1	19	10
Railroad station	.....	Winthrop	0.33	3	1	19	10
Roslindale	.....	Railroad station	0.20	6	1	37	10
Railroad station	.....	Roslindale	0.20	6	1	37	10

Probable additional service.

Roxbury	Station A, Columbia Avenue R. R. station and Back Bay station.	Huntington Avenue R. R. station.	2.00	4	.....	24	30
Huntington Avenue R. R. station.	Back Bay station, Columbia Avenue R. R. station and Station A.	Roxbury	2.00	4	.....	24	30
Cambridge	Cambridgeport	Huntington Avenue R. R. station.	2.50	2	.....	12	30
Huntington Avenue R. R. station.	Cambridgeport	Cambridge	2.50	2	.....	12	30
Dorchester	.....	Roxbury	3.00	4	.....	24	40
Roxbury	.....	Dorchester	3.00	4	.....	24	40
Cambridge	Cambridgeport, Back Bay station and station A.	Roxbury	8.50	4	.....	24	80
Roxbury	Station A, Back Bay station and Cambridgeport.	Cambridge	8.50	4	.....	24	80

NOTE.—The postmaster estimates that there will be a material increase in the number of trips required between many of the points named in the foregoing schedules, by the commencement of the contract term.

An extra wagon, with driver, ready for immediate use, must be kept at the post office between the hours of 5 a. m. and 8 p. m., and at such other hours as the postmaster may direct.

Bond required with bid, $160,000.

19 *Instructions to Bidders.*

1. The foregoing schedules show the service required August 15, 1892, as near as can be stated. *Bidders must inform themselves of the amount and character of the service that will be required during the next contract term.*

The statements of probable additional service that may be necessary on the routes under this advertisement are given so that bidders may be as fully advised as possible of the amount of service likely to be required. It will not, however, limit the liability of the contractors to perform *all* service that may become necessary, *without additional pay.*

2. The contractors under this advertisement will be required to perform, *without additional compensation, any and all new or additional service that may be ordered from July 1, 1893, or at any time thereafter during the contract term,* whether between post offices and railroad stations, between post offices and steamboat landings, between post offices and mail stations, or between the several railroad stations, steamboat landings, and mail stations, now established or that may hereafter be established, whether caused by the establishment of new or by change of site of existing post offices, railroad stations, steamboat landings, or mail stations within said cities, or caused by the alteration of the routes made necessary for any other reason. Bids must be made with this distinct understanding, and must name the amount per annum for the whole service, and not by the trip.

3. There will be no diminution of compensation for partial dis-

continuance of service, or increase of compensation for new, additional, or changed service that may be ordered during the contract term; but the Postmaster General may discontinue the entire service on any route whenever the public interest, in his judgment, shall require such discontinuance, he allowing, as full indemnity to the contractor, one month's extra pay.

4. The Postmaster General may annul a contract for re-
20 peated failures; for violating the postal laws; for disobeying the instructions of the Post Office Department; for refusing to discharge a driver or any person having charge of the mail when required by the department; for transmitting commercial intelligence or matters which should go by mail contrary to the stipulations herein or for transporting persons so engaged; whenever the contractor shall become a postmaster, assistant postmaster, clerk in a post office, or member of Congress, and whenever, in the opinion of the Postmaster General, the service can not be safely continued or the laws maintained on the route.

Fines will be imposed for neglect of duty.

5. The Postmaster General may, in his discretion, continue in force, beyond its express terms for a period not exceeding six months, any contract made under this advertisement until a new contract with the same or other contractors shall be made.

6. The distances given are believed to be substantially correct, but no additional pay will be allowed should they be greater than herein stated. Bidders must inform themselves as to the distances, the running time, the weight of the mails, the condition of hills, streets, toll bridges, ferries, and obstructions of all kinds whereby expense may be incurred, and as to the *probable increase, additional service, or changes likely to be rendered necessary.* Claims for additional pay based on such grounds, or for alleged mistakes or misapprehensions as to the service required, or for bridges destroyed or ferries discontinued can not be considered.

7. Foreign mails in transit across the territory of the United States shall, within the meaning of this advertisement, be deemed and taken to be mails of the United States.

8. The transfer service shall include the conveyance of all post office supplies arriving for the city post office or for transit through the city.

9. Contractors will be required to convey on the driver's
21 seat of each wagon, whenever necessary, one railway post office clerk, a substitute or a messenger.

10. Drivers must be over sixteen years of age, of good moral character and able to read and write the English language. They must take the oath required by law, and must wear the prescribed cap or hat.

11. All service shall be performed in regulation wagons, unless otherwise mentioned in statement of route. Full particulars as to style and construction of wagons required may be obtained on application to the Second Assistant Postmaster General, Washington,

D. C. Wagons constructed according to the style adopted by the Post Office Department of a size about midway between the large two-horse and the large one-horse wagon, preserving the plan of the former, will be permitted, but for these at least two horses shall be used. The wagons shall be kept painted and varnished in a thorough manner, and ornamented according to specifications. They must also be frequently washed and kept clean and in good condition. New wagons are not required by the specifications, but only wagons of the prescribed pattern, *in first-class condition, and to be as substantially constructed as new wagons.* First-class horses shall be used. The wagons, besides being constructed in accordance with the plans and specifications, must be provided with an additional device in the nature of an iron rod connecting the doors with the driver's seat, so that the doors cannot be opened without the knowledge of the driver. A similar device is now in use on the wagons at New York, N. Y.

12. When mails are delayed in arrival, wagons must be kept at the depots or landings until the arrival of such mails and the same be conveyed to the post office without detention. Except in cases of accident, wagons containing mail must not be opened, or the mails therein contained changed while in transit. The mails must be carried inside of the wagons, and not on the outside or on the
22 seat with the driver, and in no case shall any person be allowed to ride inside of the wagon containing mail.

13. The equipment of the contractor shall be subject to monthly inspections, and the refusal or failure of any contractor to keep his wagons, horses and harness in good order and appearance, or to furnish proper drivers, so as to perform the service in a style creditable to the department, shall be sufficient cause for the annulment of his contract and the reletting of the service at his expense.

14. Specifications for cap and hat.—Cap—To be of all-wool blue flannel of good quality, three and one-fourth (3¼) inches high, solid leather fronts one and three-fourths (1¾) inches deep, with one (1) small regulation P. O. D. button on each side, a silver wreath in front inclosing the words " U. S. mail," and to have one oiled linen cover. Hat—From June 16th to September 15th of each year, in lieu of the cap, a straw hat with rim not to exceed three and one-half (3½) inches in width and a crown not to exceed four (4) inches in height may be worn. A silver wreath inclosing the words " U. S. mail " shall be placed on the front of the hat.

15. The wagons, horses, harness, and drivers are to be at all times subject to the approval and control of the postmaster; and the mails are to be taken from and delivered into the post offices, mail stations, steamboats and cars at such points and at such hours, under his direction, approved by the Postmaster General, as will secure proper dispatches and connections, and at the contractor's expense for tolls and ferriage.

16. The number of wagons required must be sufficient, in the

opinion of the postmaster, for the prompt and proper performance of the service.

17. The contractor will be required to provide and keep on hand a sufficient number of extra wagons to take the place of those which may be temporarily disabled, delayed, waiting for trains, or
23 withdrawn from service for repairs, or required by the increase of service, so that the service shall always be promptly performed in regulation wagons.

18. Every proposal must be accompanied by a bond with two or more sureties approved by a postmaster, and in cases where the amount of the bond exceeds five thousand dollars ($5,000) the approval must be by a postmaster of the first, second or third class.

19. Sureties on the bond of a bidder must take an oath before an officer qualified to administer oaths that they are the owners of real estate worth, in the aggregate, a sum double the amount of said bond, over and above all debts due and owing by them, and all judgments, mortgages and executions against them, after allowing all exemptions of every character whatever. A married woman will not be accepted as a surety, either on the bond of a bidder or upon a contract. Accompanying the bond of a bidder and as a part thereof, shall be a statement of the sureties under oath, showing the amount of real estate owned by them, brief descriptions thereof and its probable value, where it is situated and in what county and State the record evidence of their titles exists. Any surety who swears falsely to this statement is deemed by the law guilty of perjury, and is punishable as is prescribed by the law for that crime.

20. There should be but one route bid for in a proposal. Consolidated or combination bids ("proposing one sum for two or more routes") can not be considered.

21. Bidders are cautioned to forward their proposals in time to reach the department, or to file them, by the day and hour named in this advertisement, as bids received after that time will not be considered. If sent by mail or express ample time should be allowed for their transit, as they cannot be deemed to be received at the department until actually delivered at the contract office; neither can bids be considered which are without the bond, oath or certificate required by section 245, act of June 23, 1874, and
24 section 246, act of August 11, 1876. No withdrawal of a bid will be allowed unless the withdrawal is received twenty-four hours previous to 4 p. m., December 1, 1892.

22. No contract for carrying the mail shall be made with any person who has entered, or proposed to enter, into any combination to prevent the making of any bid for carrying the mail, or who has made any agreement or given or performed, or promised to give or perform, any consideration whatever to induce any person not to bid for any such contract.

23. In case of failure of the accepted bidder to execute a contract within the prescribed time, or of the abandonment of service during the contract term, the service will be relet at the expense of the

failing bidder or contractor, and any accepted bidder who shall wrongfully refuse or fail to enter into contract in due form, and to perform the service described in his proposal, may be deemed guilty of a misdemeanor, and on conviction thereof be fined and imprisoned therefor.

24. The Postmaster General reserves the right to suspend the award of contract on any route for a period not exceeding thirty days after the date fixed in this advertisement, with a corresponding allowance of time for the execution of contract, and to reject all bids on any route whenever in his judgment the interests of the service require it; and also to disregard the bids of failing contractors and bidders and also to disregard bids accompanied by bonds on which there appears as surety the name of a person who has been declared a failing contractor or bidder, or been barred from bidding for any reason whatever.

25. Postmasters are cautioned, under penalty of removal, not to approve the bond of any bidder before the proposal is completed and the bond is signed by the bidder and his sureties, and not until entirely satisfied of the sufficiency of the sureties. They are also cautioned not to divulge to any one the amount of any proposal certified by them. Doing so will be sufficient cause for their removal.

25 26. No postmaster, assistant postmaster, or clerk employed in any post office shall be a contractor, or concerned in a contract for carrying the mail.

27. Bidders are requested to use the blanks for proposals furnished by the department, which may be obtained at the post-office on each route herein advertised. *For information relative to the service and its requirements, bidders are requested to apply to the postmaster at the city where the service is to be performed.*

28. Proposals should be inclosed in envelopes sealed, and superscribed "Proposals for covered regulation wagon mail messenger, transfer, and mail station service, city of ——," and addressed to the Second Assistant Postmaster General, Post Office Department, Washington, D. C.

JOHN WANAMAKER,
Postmaster General.

26 "EXHIBIT B."

POST OFFICE DEPARTMENT,
WASHINGTON, D. C., *December 18th*, 1899.

I certify that the annexed is a true copy taken from the files and records of this department.

In testimony whereof I have hereto set my hand, and caused the seal of the Post Office Department to be affixed, the day and year above written.

[SEAL.]

C. EMORY SMITH,
Postmaster General.

(Ed. 11–19–'92.) Kansas City, Jackson Co., Mo.

UNITED STATES OF AMERICA:

Covered Regulation Wagon Mail Messenger, Transfer, and Mail Station Service in the City of Boston, Mass.

No. 204,001; $49,516 per annum.

This article of contract, made the 21st day of December, eighteen hundred and ninety-two, between the United States of America (acting in this behalf by the Postmaster General) and Luther Clay Slavens, contractor, and James W. L. Slavens, of Kansas City, Mo., and Hiram C. Slavens, of Kansas City, Mo., as his sureties:

Witnesseth, that whereas Luther Clay Slavens has been accepted as contractor for transporting the mails on route No. 204001, being the covered regulation wagon mail messenger, transfer, and mail station service at the city of Boston, Mass., under an advertisement issued by the Postmaster General on the 15th day of September, 1892, for such service, and which advertisement is herewith referred to and made by such reference a part of this contract, and all new or additional service of said kinds which may at any time dur-
27 ing the term of this contract be required in said city, at forty-nine thousand five hundred and sixteen dollars per year, for and during the term beginning the first day of July, 1893, and ending June 30, 1897:

Now, therefore, the said contractor and his sureties do, jointly and severally, undertake, covenant, and agree with the United States of America, and do bind themselves—

First. To carry said mail, using therefor wagons of the kind hereinafter described in sufficient number to transport the whole of said mail, whatever may be its size, weight, or increase during the term of this contract, and within the time fixed in the pamphlet advertisement of the Postmaster General dated September 15, 1892; and so to carry until said schedule is altered by the authority of the Postmaster General, as herein provided, and then to carry according to such altered schedule; to carry said mails in a safe and secure manner, free from wet and other injury, in substantial one or two horse wagons of sufficient capacity for the entire mail; the wagons to be employed in the performance of the service to be built with close bodies, paneled from bed or sill to the height of an ordinary wagon body; above to be built of plain wood, panel set off with moulding, lined with canvas, with curved roof; the rear shall open below by gate, to drop to a level with the floor of the wagon, to fasten by means of a catch when shut; above by door hinges or spring hinges, so arranged that it shall shut tight against the gate and lock. The double wagons in all cases and the single wagons whenever the proper performance of the service requires it, shall

have double doors in the side, extending from the paneled frame of the body to the drip of the roof; these doors shall be hung on spring hinges; the locks and hinges to be used on the doors of all wagons shall be of the same make and pattern as is on exhibition on the sample door in the office of the Second Assistant Postmaster General, at Washington, D. C. On the front shall be a seat for the driver, with footboard, trimmed and finished in leather.

28 The wagons shall be kept painted and varnished in a thorough manner, and ornamented according to specifications, and shall be frequently washed and kept clean, and at all times be kept in good order and appearance. The painting as to colors, ornaments, and design, both on running-gear and body, shall conform to the painting and ornamenting shown in the colored drawing on exhibition at the office of the Second Assistant Postmaster General, at Washington, D. C. The bodies of such wagons shall be made to conform to the lithographic drawings of the side and rear elevations of both single and double wagons hereto appended and made part of this contract, giving scale of dimensions. In case it is desired to increase or decrease the size of said wagons, such increase or decrease shall be made in exact proportion as to height and length, the Postmaster General reserving the right to vary at any time, when in his judgment the service may require it, the plan or form of wagons to be used in the service.

Second. To take the mail from, and deliver it into, the post offices, mail stations, and cars at such points, and at such hours, under the directions of the postmaster at Boston, Mass., approved by the Postmaster General, as will secure dispatches and connections and facilitate distribution, and at the contractor's expense for tolls and ferriage.

Third. To furnish the number of regulation wagons that, in the opinion of the postmaster at Boston, Mass., will be sufficient for the prompt and proper performance of the service, including extra wagons to take the place of those that may be temporarily unserviceable, delayed waiting for trains, or withdrawn from service for repairs.

Fourth. To be accountable and answerable in damages to the United States, or any person aggrieved, for the faithful performance by the said contractor of all the duties and obligations herein assumed, on which are now or may hereafter be imposed upon him by law in this behalf; and, further, to be so answerable and accountable in damages for the careful and faithful conduct of the

29 person or persons who may be employed by said contractor and to whom the said contractor shall commit the care and transportation of the mails, and for the faithful performance of the duties which are or may be by law imposed upon such person or persons in the care and transportation of said mails; and further, that said contractor shall not commit the care and transportation of the mail to any person under sixteen years of age, nor to any person not of good moral character, or who has not taken the oath pre-

scribed by law, or who cannot read and write the English language. Each driver shall wear when on duty the prescribed hat or cap described in the pamphlet advertisement of September 15, 1892.

Fifth. To discharge any driver or other person employed in performing mail service, whenever required by the Postmaster General so to do; not to transmit by themselves, or any of them, or any of their agents, or to be concerned in transmitting, commercial intelligence more rapidly than by mail; not to carry, otherwise than in the mail, letters, packets, or newspapers which should go by mail.

Sixth. To account for and pay over any money belonging to the United States which may come into the possession of the contractor, his sureties, or employés.

Seventh. The foreign mails in transit across the territory of the United States shall, within the meaning of this contract, be deemed and taken to be mails of the United States.

Eighth. To carry post-office blanks, mail-locks and mail-bags, and all other postal supplies.

Ninth. To convey, whenever requested so to do, one railway post-office clerk, a substitute, or a messenger, on the driver's seat of each wagon.

Tenth. To perform all new or additional or changed covered regulation wagon mail, messenger, transfer, and mail station service that the Postmaster General may order at the city of Boston, Mass., during the contract term, without additional compensation, whether caused by change of location of post office, stations, landing, or the establishment of others than those existing at the date hereof or rendered necessary, in the judgment of the Postmaster General, for any cause, and to furnish such advance wagons or extra wagons from time to time for special or advance trips as the Postmaster General may require, as a part of such new or additional service.

For which service when properly performed, and the evidence thereof shall have been filed in the office of the Second Assistant Postmaster General, the said Luther Clay Slavens, contractor, is to be paid by the United States the sum of forty-nine thousand five hundred and sixteen dollars a year, to-wit: Quarterly, in the months of November, February, May and August, through the postmaster at the city of Boston, Mass., or otherwise, at the option of the Postmaster General; said pay to be subject, however, to be reduced or discontinued by the Postmaster General, as hereinafter stipulated, or to be suspended and withheld in case of delinquency.

It is hereby stipulated and agreed by the said contractor and his sureties that the Postmaster General may change the schedule and termini of the route, vary the routes, increase, decrease, or extend the service thereon, without change of pay; and that the Postmaster General may discontinue the entire service whenever the public interest, in his judgment, shall require such discontinuance; but for a total discontinuance of service the contractor shall be allowed one month's extra pay as full indemnity.

And it is further stipulated and agreed, that for a failure to deliver not beyond the control of the contractor, or for any delay or interference with the prompt delivery of the mail at the post office, mail stations, depots, and landings, or for carrying the mail in a manner different or inferior to that hereinbefore specified; for suffering the mail to be wet, injured, lost, or destroyed; or for any other delinquency, or omission of duty under this contract; for all
31 or any of which the contractor shall forfeit, and there may be withheld from his pay, such sum as the Postmaster General may impose as fines or deductions, according to the nature and frequency of the failure or delinquency.

And it is further stipulated and agreed, that the Postmaster General may annul this contract for repeated failures; for violating the postal laws; for disobeying the instructions of the Post Office Department; for refusing to discharge a carrier or any other person employed in the performance of service, when required by the Department; for transmitting commercial intelligence or matter that should go by mail, contrary to the stipulations herein; for transporting persons so engaged as aforesaid; whenever the contractor shall become a postmaster, assistant postmaster, or member of Congress; and whanever, in the opinion of the Postmaster General, the service cannot be safely performed, the revenues collected, or the laws maintained.

And it is further stipulated and agreed, that such annulment shall not impair the right of the United States to claim damages from said contractor and his sureties under this contract; but such damages may, for the purpose of set-off or counter-claim, in the settlement of any claim of said contractor or his sureties against the United States, whether arising under this contract or otherwise, be assessed and liquidated by the Auditor of the Treasury for the Post Office Department.

And it is hereby further stipulated and agreed by the said contractor and his sureties that this contract may, in the discretion of the Postmaster General, be continued in force beyond its express terms for a period not exceeding six months, until a new contract with the same or another contractor shall be made by the Postmaster General.

And it is further stipulated, that no member of, or delegate to, Congress shall be admitted to any share or part of this contract, or to any benefit to arise therefrom.

And this contract is further to be subject to all the condi-
32 tions imposed by law, and the several acts of Congress relating to post offices and post roads.

In witness whereof, the said Postmaster General has caused the seal of the Post Office Department to be hereto affixed, and has caused the same to be attested by the signature of the Second Assistant Postmaster General in accordance with the act of Congress approved March 3, 1877 (sec. 3, 19 Stats., p. 335), and the said con-

tractor and his sureties have hereunto set their hands and seals the day and year set opposite their names, respectively.

By order of the Postmaster General:

G. F. STONE,
Acting Second Assistant Postmaster General.

Signed, sealed and delivered by the Second Assistant Postmaster General in the presence of

J. E. McCABE.

Signed this 8th day of Feb'y, 1893, and by the other parties hereto in the presence of

C. E. KEARNEY, JR.,
JOHN SHEA,
Witnesses.

Signed this 5th day of January, 1893.

LUTHER CLAY SLAVENS, [SEAL.]
Contractor.

Signed this 5th day of January, 1893.

JAMES W. L. SLAVENS, [SEAL.]

Signed this 5th day of January, 1893.

HIRAM C. SLAVENS, [SEAL.]
Sureties.

POST OFFICE AT KANSAS CITY, MO., *January 5th*, 1893.

I hereby certify that I am acquainted with James W. L. Slavens, of Kansas City, Mo., and Hiram C. Slavens, of Kansas City, Mo., and the condition of their property, and that after full investigation and inquiry, I am satisfied that they are good and sufficient sureties for the amount in the foregoing contract.

F. B. NOFSINGER, *Postmaster.*

33 *Certificate of the Oath of Mail Contractors and Carriers.*

Required by act of Congress of March 5th, 1874.

☞ (Take this oath *after* signing the foregoing contract.)

I, Luther Clay Slavens, being "employed in the care, custody, and conveyance of the mail" as contractor on route No. 204001, being covered regulation wagon mail messenger, transfer, and mail station service at Boston, State of Massachusetts, do solemnly swear that I will faithfully perform all the duties required of me, and ab-

stain from everything forbidden by the laws in relation to the establishment of post offices and post roads, within the United States; and that I will honestly and truly account for and pay over any money belonging to the said United States which may come into my possession or control. And I also further swear that I will support the Constitution of the United States: so help me God.

LUTHER CLAY SLAVENS, *Contractor.*

COUNTY OF JACKSON, } ss:
State of Missouri, }

Sworn before the subscriber, W. E. Benson, notary public, for the county and State aforesaid, this fifth day of January, A. D., 1893, and I also certify that the person above named is above the age of twenty-one years, to the best of my knowledge and belief.

W. E. BENSON, [SEAL.]
Notary Public.

34 "EXHIBIT C."

POST OFFICE DEPARTMENT,
OFFICE OF THE SECOND ASSISTANT POSTMASTER GENERAL,
RAILWAY ADJUSTMENT DIVISION,
WASHINGTON, D. C., *December* 9, 1895.

SIR: You are informed that the following order has this day been issued on route No. 204001—covered regulation wagon mail messenger, transfer and mail station service at Boston, Mass.,—

"From January 31, 1896, discontinue service, allowing contractor one month's extra pay."

Very respectfully,

C. NEILSON,
Second Assistant Postmaster General.

Mr. Luther Clay Slavens, Kansas City, Jackson Co., Mo.

35

"EXHIBIT D."

Route No. 207,001.

Covered regulation wagon mail messenger, transfer, and mail station service at Brooklyn, N. Y.

Schedule of Service in Operation August 15, 1892.

Mail messenger service.

From the general post office to the following named railroad stations or steamboat landings.	Distance.	Number of trips daily, except Sunday.	Number of trips on Sunday.	Number of additional trips a week.	Total number of trips a week.	Running time allowed from July 1, 1893.
	Miles.					*Min.*
New Jersey Annex wharf	0.80	12	5	.....	77	15
Flatbush Avenue Railroad depot	1.14	7	1	.....	43	20
Long Island railroad at Long Island City via stations S, W and G	8.10	1	.....	.....	6	105
Long Island railroad at Long Island City via stations W and G	5.04	1	.....	.....	6	60
Brooklyn, Bath and West End railroad *	3.66	3	.....	.....	18	45

To the general post office from the following named railroad stations or steamboat landings.	Distance.	Number of trips daily except Sunday.	Number of trips on Sunday.	Number of additional trips a week.	Total number of trips a week.	Running time allowed from July 1, 1893.
	Miles.					*Min.*
New Jersey Annex wharf	0.80	15	3	.....	93	15
Flatbush Avenue Railroad depot	1.14	7	.....	.....	42	20
Long Island railroad at Long Island City via stations G and W	5.04	2	.....	.....	12	60
Brooklyn, Bath and West End railroad *	3.66	3	.....	.....	18	45

* From October 1 to May 31 twice daily, except Sunday.

36 *Route No.* 207,001—Continued.

Transfer service.

From the following named railroad stations.	To the following named railroad stations.	Distances.	Number of trips daily, except Sunday.	Number of trips on Sunday.	Number of additional trips a week.	Total number of trips a week.	Running time allowed from July 1, 1903.
		Miles.					*Min.*

No transfer service now required.

Mail station service.

From—	To—	Distances.	Number of trips daily, except Sunday.	Number of trips on Sunday.	Total number of trips a week.	Running time allowed from July 1, 1903.
		Miles.				*Min.*
Station B	General post office	2.40	11	4	70	30
General post office	Station B	2.40	11	4	70	30
Station S	General post office	3.57	10	3	63	45
General post office	Station S	3.57	11	3	69	45
Station V	General post office	2.35	11	3	69	30
General post office	Station V	2.35	11	3	69	30
Station W	General post office *	2.57	11	4	70	35
General post office	Station W *	2.57	11	4	70	35
Station G	Station W *	1.65	8	2	50	25
Station W	Station G *	1.65	9	3	57	25
General post office at New York, N. Y.	General post office at Brooklyn, N. Y	1.63	26	9	165	27
General post office at Brooklyn, N. Y.	General post office at New York, N. Y.	1.63	27	8	170	27
General post office	Station E *	5.38	6	2	38	(†)
Station E	General post office *	5.38	6	2	38	(†)
General post office	Woodhaven, N. Y *	8.25	3	.....	18	(‡)
Woodhaven	General post office *	8.25	3	.....	18	(‡)

* For certain trips the contractor will be allowed to perform service between the general post office and stations G, W, and S on the surface and elevated roads, and service between the general post office, station E, and Woodhaven, N. Y., on the surface, steam cars, or elevated road.
† A reasonable time will be allowed, not exceeding 60 minutes.
‡ A reasonable time will be allowed, not exceeding 100 minutes.

Bond required with bid, $40,000.

37 "EXHIBIT E."

(Ed. 11-19, '92.) Kansas City, Jackson Co., Mo.

UNITED STATES OF AMERICA:

Covered Regulation Wagon Mail Messenger, Transfer, and Mail Station Service in the City of Brooklyn, N. Y.

No. 207,001; $18,934 per annum.

This article of contract, made the 21st day of December, eighteen hundred and ninety-two, between the United States of America (acting in this behalf by the Postmaster General) and Luther Clay Slavens, contractor, and James W. L. Slavens, of Kansas City, Mo., and Hiram C. Slavens, of Kansas City, Mo., as his sureties:

Witnesseth, that whereas Luther Clay Slavens has been accepted as contractor for transporting the mails on route No. 207001, being the covered regulation wagon mail messenger, transfer and mail station service at the city of Brooklyn, N. Y., under an advertisement issued by the Postmaster General on the 15th day of September, 1892, for such service, and which advertisement is herewith referred to and made by such reference a part of this contract, and all new or additional service of said kinds which may at any time during the term of this contract be required in said city, at eighteen thousand, nine hundred and thirty-four dollars per year, for and during the term beginning the first day of July, 1893, and ending June 30, 1897:

Now, therefore, the said contractor and his sureties do, jointly and severally, undertake, covenant and agree with the United States of America, and do bind themselves—

First. To carry said mail, using therefor wagons of the kind hereinafter described in sufficient number to transport the whole of said mail, whatever may be its size, weight, or increase during the term of this contract, and within the time fixed in the pamphlet
38 advertisement of the Postmaster General dated September 15th, 1892; and so to carry until said schedule is altered by the authority of the Postmaster General, as herein provided, and then to carry according to such altered schedule; to carry said mails in a safe and secure manner, free from wet and other injury, in substantial one or two horse wagons of sufficient capacity for the entire mail; the wagons to be employed in the performance of the service to be built with close bodies, paneled from bed or sill to the height of an ordinary wagon body; above to be built of plain wood, panel set off with moulding, lined with canvas, with curved roof; the rear shall open below by gate, to drop to a level with the floor of the wagon, to fasten by means of a catch when shut; above by door

hinges or spring hinges, so arranged that it shall shut tight against the gate and lock. The double wagons in all cases and the single wagons whenever the proper performance of the service requires it, shall have double doors in the side, extending from the paneled frame of the body to the drip of the roof; these doors shall be hung on spring hinges; the locks and hinges to be used on the doors of all wagons shall be of the same make and pattern as is on exhibition on the sample door in the office of the Second Assistant Postmaster General, at Washington, D. C. On the front shall be a seat for the driver, with footboard, trimmed and finished in leather. The wagons shall be kept painted and varnished in a thorough manner, and ornamented according to specifications, and shall be frequently washed and kept clean, and at all times be kept in good order and appearance. The painting as to colors, ornaments and design, both on running-gear and body, shall conform to the painting and ornamenting shown in the colored drawing on exhibition at the office of the Second Assistant Postmaster General, at Washington, D. C. The bodies of such wagons shall be made to conform to the lithographic drawings of the side and rear elevations of both single and double wagons hereto appended and made part of this con-
39 tract, giving scale of dimensions. In case it is desired to increase or decrease the size of said wagons, such increase or decrease shall be made in exact proportion as to height and length, the Postmaster General reserving the right to vary at any time, when in his judgment the service may require it, the plan or form of wagons to be used in the service.

Second. To take the mail from, and deliver it into, the post offices mail stations, and cars at such points, and at such hours, under the directions of the postmaster at Brooklyn, N. Y., approved by the Postmaster General, as will secure dispatches and connections and facilitate distribution, and at the contractor's expense for tolls and ferriage.

Third. To furnish the number of regulation wagons that, in the opinion of the postmaster at Brooklyn, N. Y., will be sufficient for the prompt and proper performance of the service, including extra wagons to take the place of those that may be temporarily unserviceable, delayed, waiting for trains, or withdrawn from service for repairs.

Fourth. To be accountable and answerable in damages to the United States, or any person aggrieved, for the faithful performance by the said contractor of all the duties and obligations herein assumed, or which are now or may hereafter be imposed upon him by law in this behalf; and, further, to be so answerable and accountable in damages for the careful and faithful conduct of the person or persons who may be employed by said contractor, and to whom the said contractor shall commit the care and transportation of the mails, and for the faithful performance of the duties which are, or may be by law, imposed upon such person or persons in the care and transportation of said mails, and, further, that said contractor

shall not commit the care and transportation of the mail to any person under sixteen years of age, nor to any person not of good moral character or who has not taken the oath prescribed by law, or who cannot read and write the English language. Each
40 driver shall wear when on duty the prescribed cap or hat described in the pamphlet advertisement of September 15, 1892.

Fifth. To discharge any driver, or other person employed in performing mail service, whenever required by the Postmaster General so to do; not to transmit by themselves, or any of them, or any of their agents, or to be concerned in transmitting commercial intelligence more rapidly than by mail; not to carry, otherwise than in the mail, letters, packets or newspapers which should go by mail.

Sixth. To account for and pay over any money belonging to the United States which may come into the possession of the contractor, his sureties, or employees.

Seventh. That foreign mails in transit across the territory of the United States shall, within the meaning of this contract, be deemed and taken to be mails of the United States.

Eighth. To carry post-office blanks, mail-locks and mail-bags, and all other postal supplies.

Ninth. To convey, whenever requested so to do, one railway post office clerk, a substitute or a messenger, on the driver's seat of each wagon.

Tenth. To perform all new or additional or changed covered regulation wagon mail messenger, transfer, and mail station service that the Postmaster General may order at the city of Brooklyn, New York, during the contract term, without additional compensation, whether caused by change of location of post office, station, landing, or the establishment of others than those existing at the date hereof, or rendered necessary, in the judgment of the Postmaster General, for any cause, and to furnish such advance wagons or extra wagons from time to time for special or advance trips as the Postmaster General may require, as a part of such new or additional service.

For which service, when properly performed, and the evidence thereof shall have been filed in the office of the Second As-
41 sistant Postmaster General, the said Luther Clay Slavens, contractor, is to be paid by the United States the sum of eighteen thousand nine hundred and thirty-four dollars a year, to-wit: quarterly, in the months of November, February, May and August, through the postmaster at the city of Brooklyn, N. Y., or otherwise, at the option of the Postmaster General; said pay to be subject, however, to be reduced or discontinued by the Postmaster General, as hereinafter stipulated, or to be suspended and withheld in case of delinquency.

It is hereby stipulated and agreed by the said contractor and his sureties that the Postmaster General may change the schedule and termini of the route, vary the routes, increase, decrease, or extend the service thereon, without change of pay; and that the Postmas-

ter General may discontinue the entire service whenever the public interest, in his judgment, shall require such discontinuance; but for a total discontinuance of service the contractor shall be allowed one month's extra pay as full indemnity.

And it is further stipulated and agreed, that for a failure to deliver not beyond the control of the contractor, or for any delay or interference with the prompt delivery of the mail at the post office, mail stations, depots, and landings, or for carrying the mail in a manner different or inferior to that hereinbefore specified; for suffering the mail to be wet, injured, lost or destroyed; or for any other delinquency or omission of duty under this contract; for all or any of which the contractor shall forfeit, and there may be withheld from his pay, such sum as the Postmaster General may impose as fines or deductions, according to the nature and frequency of the failure or delinquency.

And it is further stipulated and agreed, that the Postmaster General may annul this contract for repeated failures; for violating the postal laws; for disobeying the instructions of the Post Office Department; for refusing to discharge a carrier or any other person employed in the performance of service, when required by
42 the department; for transmitting commercial intelligence or matter that should go by mail, contrary to the stipulations herein; for transporting persons so engaged as aforesaid; whenever the contractor shall become a postmaster, assistant postmaster, or member of Congress; and whenever, in the opinion of the Postmaster General, the service cannot be safely performed, the revenues collected, or the laws maintained.

And it is further stipulated and agreed, that such annulment shall not impair the right of the United States to claim damages from said contractor and his sureties under this contract; but such damages may, for the purpose of set-off or counter-claim, in the settlement of any claim of said contractor or his sureties against the United States, whether arising under this contract or otherwise, be assessed and liquidated by the Auditor of the Treasury for the Post Office Department.

And it is hereby further stipulated and agreed by the said contractor and his sureties that this contract may, in the discretion of the Postmaster General, be continued in force beyond its express terms for a period not exceeding six months, until a new contract with the same or another contractor shall be made by the Postmaster General.

And it is further stipulated, that no member of or delegate to, Congress shall be admitted to any share or part of this contract, or to any benefit to arise therefrom.

And this contract is further to be subject to all the conditions imposed by law, and the several acts of Congress relating to post offices and post roads.

In witness whereof, the said Postmaster General has caused the seal of the Post Office Department to be hereto affixed, and has

caused the same to be attested by the signature of the Second Assistant Postmaster General, in accordance with the act of Congress approved March 3, 1877 (sec. 3, 19 Stats., p. 335), and the said contractor and his sureties have hereunto set their hands and seals the day and year set opposite their names, respectively.

43 By order of the Postmaster General:

G. F. STONE,
Acting Second Assistant Postmaster General.

Signed, sealed, and delivered by the Second Assistant Postmaster General in the presence of
J. E. McCABE.

Signed this 8th day of February, 1893, and by the other parties hereto in the presence of
C. E. KEARNEY, JR.,
JOHN SHEA,
Witnesses.

Signed this 5th day of January, 1893.
LUTHER CLAY SLAVENS, [SEAL.]
Contractor.

Signed this 5th day of January, 1893.
JAMES W. L. SLAVENS, [SEAL.]

Signed this 5th day of January, 1893.
HIRAM C. SLAVENS, [SEAL.]
Sureties.

POST OFFICE AT KANSAS CITY, MO., *January 5th*, 1893.

I hereby certify that I am acquainted with James W. L. Slavens, of Kansas City, Mo., and Hiram C. Slavens, of Kansas City, Mo., and the condition of their property, and that, after full investigation and inquiry, I am satisfied that they are good and sufficient sureties for the amount in the foregoing contract.

F. B. NOFSINGER, *Postmaster.*

Certificate of the Oath of Mail Contractors and Carriers.

Required by act of Congress of March 5, 1874.

☞ (Take this oath *after* signing the foregoing contract.)

I, Luther Clay Slavens, being "employed in the care, custody, and conveyance of the mail" as contractor on route No. 207001,
44 being covered regulation wagon mail messenger, transfer, and mail station service at Brooklyn, State of New York, do solemnly swear that I will faithfully perform all the duties required of me, and abstain from everything forbidden by the laws in relation to the establishment of post offices and post roads within the United States; and that I will honestly and truly account for

and pay over any money belonging to the said United States which may come into my possession or control. And I also further swear that I will support the Constitution of the United States: so help me God.

LUTHER CLAY SLAVENS, *Contractor.*

COUNTY OF JACKSON, } ss:
State of Missouri, }

Sworn before the subscriber, W. E. Benson, notary public, for the county and State aforesaid, this fifth day of January, A. D. 1893, and I also certify that the person above named is above the age of twenty-one years, to the best of my knowledge and belief.

W. E. BENSON, [SEAL.]
Notary Public.

A true copy:
G. F. STONE,
Chief Clerk to Second Ass't P. M. Gen'l.

45 "EXHIBIT F."

Route 207,001, order No. 1432.

POST OFFICE DEPARTMENT, *January* 21, 1896.

Discontinue service from February 29th, 1896, and allow contractor one month's extra pay.

(Signed) WM. L. WILSON,
Postmaster General.

46 "EXHIBIT G."

Proposals for Covered Regulation Wagon Mail Messenger, Transfer, and Mail Station Service.

POST OFFICE DEPARTMENT,
WASHINGTON, D. C., *September* 15, 1893.

Proposals will be received at the contract office of this department until 4 p. m. of December 1, 1893, for carrying the mails of the United States in the covered regulation wagons prescribed by the department, on the routes herein specified, being covered regulation wagon mail messenger, transfer, and mail station service in the cities hereinafter named, between the post-offices and railroad stations, between the post-offices and steamboat landings, between the post-offices and mail stations, and between the several railroad stations, steamboat landings, and mail stations, as prescribed herein, for the term from July 1, 1894, to June 30, 1898, viz:

New Orleans, La. Omaha, Nebr.
San Francisco, Cal.

Decisions announced on or before December 21, 1893.

Contracts to be returned to the department, duly executed, within thirty days from date of acceptance of proposals.

47 *Route No.* 257,001.

Covered regulation wagon, mail messenger, transfer, and mail station service at Omaha, Nebr.

Schedule of Service in Operation August 15, 1893.

Mail messenger service.

From the general post office to the following named railroad stations.	Distance.	Number of trips daily, except Sunday.	Number of trips on Sunday.	Number of additional trips a week.	Total number of trips a week.	Running time allowed from July 1, 1894.
	Miles.					*Min.*
Union depot	1.12	21	16	.....	142	30
Burlington and Missouri River R. R. in Nebraska.						
Chicago, Burlington and Quincy railroad.						
Chicago, Milwaukee and St. Paul railroad.						
Chicago and Northwestern railroad.						
Chicago, Rock Island and Pacific railroad.						
Kansas City, St. Joseph and Council Bluffs R. R.						
Sioux City and Pacific railroad.						
Union Pacific railroad.						
Wabash railroad.						
Webster Street depot	0.51	7	6	.....	48	20
Chicago, St. Paul, Minneapolis and Omaha R. R.						
Fremont, Elkhorn and Missouri Valley railroad.						
Missouri Pacific railroad.						

To the general post office from the following named railroad stations.	Distance.	Number of trips daily, except Sunday.	Number of trips on Sunday.	Number of additional trips a week.	Total number of trips a week.	Running time allowed from July 1, 1894.
	Miles.					*Min.*
Union depot	1.12	23	18	.....	156	30
Burlington and Missouri River R. R. in Nebraska.						
Chicago, Burlington and Quincy railroad.						
Chicago, Milwaukee and St. Paul railroad.						
Chicago and Northwestern railroad.						
Chicago, Rock Island and Pacific railroad.						
Kansas City, St. Joseph and Council Bluffs R. R.						
Sioux City and Pacific railroad.						
Union Pacific railroad.						
Wabash railroad.						
Webster Street depot	0.51	9	6	.....	60	20
Chicago, St. Paul, Minneapolis and Omaha R. R.						
Fremont, Elkhorn and Missouri Valley railroad.						
Missouri Pacific railroad.						

48 *Route No.* 257,001—Continued.

Transfer service.

From the following named railroad station.	To the following named railroad station.	Distance.	Number of trips daily, except Sunday.	Number of trips on Sunday.	Number of additional trips a week.	Total number of trips a week.	Running time allowed from July 1, 1894.
Union depot	Webster Street depot	*Miles.* 1.58	1	1	.....	7	*Min.* 30

Mail station service.

From—	By—	To—	Distance.	Number of trips daily, except Sunday.	Number of trips on Sunday.	Total number of trips a week.	Running time allowed from July 1, 1894.
			Miles.				*Min.*

No mail station service now in operation.
Bond required with bid, $10,000.00.

49 "EXHIBIT H."

POST OFFICE DEPARTMENT,
WASHINGTON, D. C., *December* 18*th*, 1899.

I certify that the annexed is a true copy taken from the files and records of this department.

In testimony whereof I have hereto set my hand and caused the seal of the Post Office Department to be affixed, the day and year above written.

C. EMORY SMITH,
Postmaster General.

(Form No. 2605.)

Contract for Mail Service.

Covered regulation wagon mail messenger, transfer, and mail station service in the city of Omaha, Neb.

Route No. 257,001; annual rate of pay, $3,780.

Contractor's address: Kansas City, Jackson Co., State of Missouri.

This article of contract, made the 21 day of December, eighteen hundred and ninety-three, between the United States of America (acting in this behalf by the Postmaster General) and Luther C. Slavens, Jr., contractor, and James W. L. Slavens, of Kansas City, Mo., and Hiram C. Slavens, of Kansas City, as his sureties:

Witnesseth, that whereas Luther C. Slavens, Jr., has been accepted as contractor for transporting the mails on route No. 257001, being the covered regulation wagon mail messenger, transfer, and mail station service at the city of Omaha, Nebr., under an advertisement issued by the Postmaster General on the 15th day of September, 1893, for such service, and which advertisement is herewith
50 referred to and made by such reference a part of this contract, and all new or additional service of said kinds which may at any time during the term of this contract be required in said city, at three thousand seven hundred and eighty dollars per year, for and during the term beginning the 1st day of July, 1894, and ending June 30, 1898.

Now, therefore, the said contractor and his sureties do, jointly and severally, undertake, covenant, and agree with the United States of America, and do bind themselves—

First. To carry said mail, using therefor wagons of the kind hereinafter described in sufficient number to transport the whole of said mail, whatever may be its size, weight or increase during the term of this contract, and within the time fixed in the pamphlet advertisement of the Postmaster General dated September 15, 1893; and so to carry until said schedule is altered by the authority of the Postmaster General, as herein provided, and then to carry according to such altered schedule; to carry said mails in a safe and secure manner, free from wet or other injury, in substantial one or two horse wagons of sufficient capacity for the entire mail; the wagons to be employed in the performance of the service to be built with closed bodies, paneled from bed or sill to the height of an ordinary wagon body; above to be built of plain wood, panel set off with molding, lined with canvas, with curved roof; the rear shall open below by gate, to drop to a level with the floor of the wagon, to fasten by means of a catch when shut; above by door hinges or spring

hinges, so arranged that it shall shut tight against the gate and shall lock. The double wagons in all cases, and the single wagons whenever the proper performance of the service requires it, shall have double doors in the side, extending from the panel frame of the body to the drip of the roof; these doors shall be hung on spring hinges; the locks and hinges to be used on the doors of all wagons shall be of the same make and pattern as is on exhibition on the sample door in the office of the Second Assistant Postmaster General, at Wash-
51 ington, D. C. On the front shall be a seat for the driver, with footboard, trimmed and finished in leather. The wagons shall be kept painted and varnished in a thorough manner, and ornamented according to specifications, and shall be frequently washed and kept clean, and at all times be kept in good order and appearance. The painting, as to colors, ornaments, and design, both on running-gear and body, shall conform to the painting and ornamenting shown in the colored drawing on exhibition at the office of the Second Assistant Postmaster General, at Washington, D. C. The bodies of such wagons shall be made to conform to the lithographic drawings of the side and rear elevations of both single and double wagons hereto appended and made part of this contract, giving scale of dimensions. In case it is desired to increase or decrease the size of said wagons, such increase or decrease shall be made in exact proportion as to height and length, the Postmaster General reserving the right to vary at any time, when in his judgment the service may require it, the plan or form of wagons to be used in the service, provided the changes in plan or form of wagons do not involve the discontinuance of the wagons then in use and approved by him.

Second. To take the mail from, and deliver it into the post offices, mail stations, and cars at such points, and at such hours, under the directions of the postmaster at Omaha, Nebr., approved by the Postmaster General, as will secure dispatches and connections and facilitate distribution, and at the contractor's expense for tolls and ferriage.

Third. To furnish the number of regulation wagons that, in the opinion of the postmaster at Omaha, Nebr., will be sufficient for the prompt and proper performance of the service, including extra wagons to take the place of those that may be temporarily unserviceable, delayed waiting for trains, or withdrawn from service for repairs.

Fourth. To be accountable and answerable in damages to the United States, or any person aggrieved, for the faithful per-
52 formance by the said contractor of all the duties and obligations herein assumed, or which are now or may hereafter be imposed upon him by law in this behalf; and, further, to be so answerable and accountable in damages for the careful and faithful conduct of the person or persons who may be employed by said contractor and to whom the said contractor shall commit the care and transportation of the mails, and for the faithful performance of the

duties which are or may be by law imposed upon such person or persons in the care and transportation of said mails; and, further, that said contractor shall not commit the care and transportation of the mail to any person under sixteen years of age, nor to any person not of good moral character, or who has not taken the oath prescribed by law, or who can not read and write the English language. Each driver shall wear when on duty the prescribed cap or hat described in the pamphlet advertisement of September 15th, 1893.

Fifth. To discharge any driver or other person employed in performing mail service, whenever required by the Postmaster General so to do; not to transmit by themselves, or any of them, or any of their agents, or be concerned in transmitting commercial intelligence more rapidly than by mail; not to carry otherwise than in the mail, letters, packets or newspapers which should go by mail.

Sixth. To account for and pay over any money belonging to the United States which may come into the possession of the contractor, his sureties or employés.

Seventh. That foreign mails in transit across the territory of the United States shall, within the meaning of this contract, be deemed and taken to be mails of the United States.

Eighth. To carry post office blanks, mail locks and mail bags, and all other postal supplies.

Ninth. To convey, whenever requested so to do, one railway post office clerk, a substitute, or a messenger, on the driver's seat of each wagon.

53 Tenth. To perform all new or additional or changed covered regulation wagon mail messenger, transfer, and mail station service that the Postmaster General may order at the city of Omaha, Nebr., during the contract term, without additional compensation, whether caused by change of location of post office, stations, landing, or the establishment of others than those existing at the date hereof, or rendered necessary, in the judgment of the Postmaster General, for any cause, and to furnish such advance wagons or extra wagons from time to time for special or advanced trips as the Postmaster General may require, as a part of such new or additional service.

For which service, when properly performed, and the evidence thereof shall have been filed in the office of the Second Assistant Postmaster General, the said Luther C. Slavens, Jr., contractor, is to be paid by the United States the sum of three thousand, seven hundred and eighty dollars a year, to-wit: quarterly, in the months of November, February, May and August, through the postmaster at the city of Omaha, Nebr., or otherwise, at the option of the Postmaster General; said pay to be subject, however, to be reduced or discontinued by the Postmaster General as hereinafter stipulated, or to be suspended and withheld in the case of delinquency.

It is hereby stipulated and agreed by the said contractor and his

sureties that the Postmaster General may change the schedule and termini of the route, vary the routes, increase, decrease, or extend the service thereon, without change of pay; and that the Postmaster General may discontinue the entire service whenever the public interest, in his judgment, shall require such discontinuance; but for a total discontinuance of service the contractor shall be allowed one month's extra pay as full indemnity.

And it is further stipulated and agreed, that for a failure to deliver not beyond the control of the contractor, or for any de-
54 lay or interference with the prompt delivery of the mail at the post office, mail stations, depots and landings, or for carrying the mail in a manner different or inferior to that hereinbefore specified; for suffering the mail to be wet, injured, lost, or destroyed; or for any other delinquency or omission of duty under this contract; for all or any of which the contractor shall forfeit, and there may be withheld from his pay, such sum as the Postmaster General may impose as fines or deductions, according to the nature and frequency of the failure or delinquency.

And it is further stipulated and agreed that the Postmaster General may annul this contract for repeated failures; for violating the postal laws; for disobeying the instructions of the Post Office Department; for refusing to discharge a carrier or any other person employed in the performance of service, when required by the department; for transmitting commercial intelligence or matter that should go by mail, contrary to the stipulations herein; for transporting persons so engaged as aforesaid; whenever the contractor shall become a postmaster, assistant postmaster, or member of Congress; and whenever, in the opinion of the Postmaster General, the service can not be safely performed, the revenues collected, or the laws maintained.

And it is further stipulated and agreed, that such annulment shall not impair the right of the United States to claim damages from said contractor and his sureties under this contract; but such damages may, for the purpose of set-off or counter-claim, in the settlement of any claim of said contractor or his sureties against the United States, whether arising under this contract or otherwise, be assessed and liquidated by the Auditor of the Treasury for the Post Office Department.

And it is hereby further stipulated and agreed by the said contractor and his sureties that this contract may, in the discretion of the Postmaster General, be continued in force beyond its
55 express terms for a period not exceeding six months until a new contract with the same or another contractor shall be made by the Postmaster General.

And it is further stipulated, that no member of, or delegate to, Congress shall be admitted to any share or part of this contract or to any benefit to arise therefrom.

And this contract is further to be subject to all the conditions im-

posed by law and the several acts of Congress relating to post offices and post roads.

In witness whereof, the said Postmaster General has caused the seal of the Post Office Department to be hereto affixed, and has caused the same to be attested by the signature of the Second Assistant Postmaster General, in accordance with the act of Congress approved March 3, 1877 (section 3, 19 Stats., p. 335), and the said contractor and his sureties have hereunto set their hands and seals the day and year set opposite their names, respectively.

By order of the Postmaster General.

J. LOWRIE BELL,
Second Assistant Postmaster General.

Signed, sealed, and delivered by the Second Assistant Postmaster General in the presence of

J. E. McCABE.

Signed this 9th day of Jan'y, 1894, and by the other parties hereto in the presence of

H. C. REESE,
H. H. WOOD,
Witnesses.

Signed this 27th day of December, 1893.

LUTHER C. SLAVENS, JR., [SEAL.]
Contractor.

Signed this 27th day of December, 1893.

JAMES W. L. SLAVENS, [SEAL.]

Signed this 27th day of December, 1893.

HIRAM C. SLAVENS, [SEAL.]
Sureties.

56 POST OFFICE AT KANSAS CITY, MO.,
December 27th, 1893.

I hereby certify that I am acquainted with James W. L. Slavens, of Kansas City, Mo., and Hiram C. Slavens, of Kansas City, Mo., and the condition of their property, and that, after full investigation and inquiry, I am satisfied that they are good and sufficient sureties for the amount in the foregoing contract.

F. B. NOFSINGER, *Postmaster.*

NOTE.—This certificate must be signed by the postmaster and not by any other person.

IMPORTANT.—The oath on the next page must be taken by the contractor.

Certificate of the Oath of Mail Contractors and Carriers.

Required by act of Congress of March 5, 1874.

☞(Take this oath *after* signing the foregoing contract.)

I, Luther C. Slavens, Jr., being "employed in the care, custody, and conveyance of the mail" as contractor on route No. 257001, being covered regulation wagon mail messenger, transfer, and mail station service at Omaha, State of Nebraska, do solemnly swear that I will faithfully perform all the duties required of me, and abstain from everything forbidden by the laws in relation to the establishment of post offices and post roads within the United States; and that I will honestly and truly account for and pay over any money belonging to the said United States which may come into my possession or control. And I also further swear that I will support the Constitution of the United States: so help me God.

LUTHER C. SLAVENS, JR., *Contractor.*

COUNTY OF JACKSON, } ss:
State of Missouri, }

Sworn before the subscriber, W. E. Benson, a notary public for the county and State aforesaid, this 27th day of December, A. D. 1893, and I also certify that the person above named is above the age of twenty-one years, to the best of my knowledge and belief.

W. E. BENSON, [SEAL.]
Notary Public.

57 II.—*Amendment to Petition.*

Comes now the claimant, by his attorney and amends the petition by him heretofore filed herein, as follows, to wit:

Paragraph third:

On printed page 4, (fifteenth line from bottom,) strike out the amount "$32,128."; and in lieu thereof, insert: "to wit, $32,339."

Paragraph fourth:

On printed page 8, (fifteenth line from bottom,) strike out the amount "$16,064."; and, in lieu thereof, insert: "to wit, $18,445.33."

On printed page 10, sub-paragraph (*g*), strike out the amount "20%;" and, in lieu thereof, insert: "25%."

On printed page 10, sub-paragraph (*h*), strike out the distance there given as ".02 miles" and, in lieu thereof, insert: ".10 miles." Also, in the same sub-paragraph, strike out the amount "20%;" and, in lieu thereof, insert: "25%."

LUTHER CLAY SLAVENS, *Claimant,*
By A A. HOEHLING, JR., *His Attorney.*

Filed February 24, 1903.

58 III.—*Traverse. Filed March* 17, 1903.

And now comes the Attorney General on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

L. A. PRADT,
Ass't Attorney General.

IV.—*Argument and Submission.*

This case was argued on the 17th and 18th days of March 1903 and submitted.

59 V.—*Findings of Fact as Amended and Conclusion of Law, and Opinion of the Court and Dissenting Opinion.*

Filed as of May 25, 1903.

This case having been heard by the Court of Claims, the court, upon the evidence, make the following

Findings of Fact.

I.

The claimant is a citizen of the United States, and a resident of Kansas City, in the State of Missouri.

II.

That on September 15, 1892, the then Postmaster-General of the United States, acting therein on behalf of the United States, advertised for proposals for transporting the mails in various cities, and, among others, on route No. 204001, being the "covered regulation wagon mail messenger, transfer, and mail station service," at the city of Boston, Mass.

III.

That, pursuant to said advertisement and the several matters therein contained, claimant made and filed with the department a proposal for the performance of said service, consisting of transporting the mails at and in said city of Boston for the period named in said advertisement, to wit, from July 1, 1893, to June 30, 1897, inclusive, naming as the compensation to be received by claimant

therefor the sum of $49,516 per annum; that said bid was duly accepted by the department, and thereafter, on December 21, 1892, claimant entered into a contract with the United States for the performance of said service during the period aforesaid, and thereupon he engaged in the carrying of the mails aforesaid under said contract, a copy of which contract appears in the petition.

IV.

During the time claimant performed the service under said contract the defendant required him to transport the mails be-
60 tween the mailing room and basement of the general post-office, at said city of Boston, and the stopping place of West End Street Railway Company, on Water street, in said city, from May 1, 1895, to February 1, 1896, requiring the employment by claimant, in the rendition of such service, two wagons, two horses, and two drivers, and sometimes an extra wagon.

The claimant protested against the performance of these services to the postmaster at Boston, but no protest or objection was made to the Postmaster-General, nor to any person connected with
(J. R.) the Post-Office Department at Washington. If entitled to recover for these services the reasonable value thereof is $274.55.

V.

During the term of said contract claimant was directed by the postmaster at the city of Boston to transmit the mails between what was known as the Back Bay post-office and the Brookline post-office, a distance of from 2½ to 3 miles, the latter post-office being outside of the city limits of Boston, and situated in an independent town, and which said service was not embraced within the terms of said contract. That claimant objected to the performance of this service to the postmaster at Boston, but did not make any protest to the Postmaster-General nor to any officer of the Post-Office Department, nor was the Postmaster-General nor any officer of the Post-Office Department apprised of the fact of the performance of this service by the claimant until August 14, 1894. Upon being apprised of the performance of this service by the claimant, the Postmaster-General promptly ordered its discontinuance and entered into contract to have the same performed by another person, for
(J. R.) which payment was made to said other person. If entitled to recover for these services the reasonable value is $462.50.

VI.

That on December 9, 1895, and during the term of said contract, defendant ordered claimant to discontinue the service so being performed by him on said route No. 204001, and, pursuant to said order,

claimant was compelled to discontinue the performance of said service on January 31, 1896.

A copy of said order to discontinue is as follows:

WASHINGTON, D. C., *December* 9, 1895.

"SIR: You are informed that the following order has this day been issued on route No. 204001—covered regulation wagon mail messenger, transfer, and mail station service at Boston, Mass.:

"'From January 31, 1896, discontinue service, allowing contractor one month's extra pay.'

"Very respectfully,

C. NEILSON,

"*Second Assistant Postmaster-General.*

"Mr. Luther Clay Slavens, Kansas City, Jackson county, Mo."

VII.

That said order to discontinue said service under the contract aforesaid was not made on account of any neglect or default on the part of claimant in the performance of said contract. The right was asserted by defendant to so order claimant to discontinue the
61 service under the clause contained in said contract providing "that the Postmaster-General may discontinue the entire *service* whenever the public interest, in his judgment, shall require such discontinuance." Claimant had been previously offered the privilege of continuing the service at a reduction from the contract rate, which he declined.

VIII.

(J. R.) That thereupon, in order to have the service thus reorganized performed, against the protest and objection of claimant, and without his consent, defendant ordered claimant to discontinue said service and thereafter defendants relet the same service (as decreased, as aforesaid) under said route No. 204001, to another for the balance of said contract period, namely, from February 1, 1896, to June 30, 1897, inclusive, a period of seventeen months, at a compensation of $37,000 per annum, said route being designated in said Skinner contract as No. 204002, and that said service was thereafter continuously performed by such other during the remainder of the contract period aforesaid.

IX.

If the claimant is entitled to recover damages, as for a breach of the contract, because of its annulment prior to the period therein named, the measure of damages would be the sum of $18,884.14, less the one month's extra pay paid upon said contract, to wit, the sum of $4,126.33, leaving the amount to be recovered $14,757.81.

X.

On September 15, 1892, the then Postmaster-General of the United States, acting therein on behalf of the United States, also invited proposals for transporting the mail on route No. 207001, being the "covered regulation wagon mail messenger, transfer, and mail station service," at the city of Brooklyn, State of New York.

XI.

Pursuant to said advertisement and the matters therein contained, claimant made and filed with the department a proposal for the performance of said service, consisting in carrying the mails in said city of Brooklyn for the period named in said advertisement, namely, from July 1, 1893, to June 30, 1897, inclusive, naming as the compensation to be received by claimant therefor the sum of $18,934 per annum; that said bid was duly accepted by said department; and thereafter, on December 21, 1892, claimant entered into a contract with the United States for the performance of said service during the period aforesaid; and thereupon claimant engaged in the carrying of the mails aforesaid under and in pursuance of said contract.

A true copy of said contract appears in the petition.

XII.

During the claimant's term of service at Brooklyn, N. Y. (from December 18, 1895), and in order to provide that city with improved mail facilities, the Post-Office Department established mail
62 service on the Brooklyn Heights railroad (railway routes Nos. 207805 and 207807)—a street-car line—for the transportation in the cars of that company of the mails from the vicinity of the post-office to the vicinity of the postal stations E, W, and G, and the Long Island railroad at Long Island City (Manhattan avenue and Box street).

The service thus established dispensed with the service theretofore required of claimant under his contract for the transportation of mails over the routes covered by said street-car line. In lieu of this service the claimant was required to perform service between the post-office and the mail route established on the street-car line and between said mail route and the mail stations. The same mails theretofore required under his contract to be transported over long distances were thereby reduced to very shorter distances.

The service theretofore required of the contractor under his contract and the advertisement, of which he was relieved, and the service required of him in lieu thereof, is, in detail, as follows:

(*b.*) The service under the advertisement was: General post-office to station E, distance 5.38 miles, 36 round trips per week. The service required in lieu thereof was: Station E to Brooklyn Heights

railroad (Alabama avenue), 0.23 of a mile, from December 18, 1895, 119 round trips per week.

The miles of travel of which the claimant was relieved *was* 4,298.66.

The miles of travel required in lieu thereof *was* 143.56, a reduction in miles of travel of 4,155.01.

(*a.*) From December 18, 1895, claimant was required to perform further service to station E in lieu of the service theretofore required, such new service being from Manhattan crossing to station E, 0.38 of a mile, 18 round trips per week. Manhattan crossing was a railroad station on a railroad route, No. 107124, and was in existence at the time the claimant made his contract. The service was provided for by paragraph 2 of the advertisement and provisions of the contract, section 10.

(*c.*) The service required under the advertisement was: Station G to station W, 1.65 miles, 50 trips per week; station W to station G, 1.65 miles, 57 trips per week. The service required of claimant in lieu thereof was: Station G to Brooklyn Heights railroad (Manhattan and Green Point avenues), 0.06 of a mile (from December 18, 1895), 118 trips per week; Brooklyn Heights railroad to station G, 0.06 of a mile (from same date), 119 trips per week. The miles of travel of which the claimant was relieved *was* 1,855.92; the miles of travel in lieu thereof *was* 149.48, making a net reduction in miles traveled of 1,706.44.

(*d.*) The service required under the advertisement was: General post-office to station W, distance 2.57 miles, 70 round trips a week. The service required of claimant in lieu thereof was: Station W to Brooklyn Heights railroad (Bedford avenue and Broadway), 0.08 mile (from December 18, 1895), 232 trips a week. The miles of travel of which claimant was relieved *was* 3,782.14; the miles of travel in lieu thereof *was* 389.98; a reduction in miles of travel of 3,392.16.

(*e.*) The service required under the advertisement was: General post-office to Long Island railroad at Long Island City, via stations S, W, and G, 8.10 miles, 6 trips a week. Long Island railroad at Long Island City, via stations G and W, to general post-office, 5.04 miles, 12 trips a week.

63 The service required of complainant in lieu thereof was: Long Island railroad at Long Island City to Brooklyn Heights railroad, 0.61 mile (from December 18, 1895), 36 round trips a week.

The miles of travel of which the claimant was relieved *was* 1,437.82; the miles of travel required in lieu thereof *was* 461.76, a reduction in miles of travel of 976.06.

Further, during the claimant's term of contract at Brooklyn, the department authorized and established regular railroad service on the Brooklyn Heights railroad on route 107172, terminating in the city of Brooklyn.

It became necessary, in consequence of the establishment of said railroad route, to provide service between the general post-office and

the terminus of such route at Fulton and Johnson streets, and the claimant was required to provide for same.

Details of the service required are as follows:

(*f* and *h*) general post-office to Brooklyn Heights railroad, Fulton and Johnson streets, 0.1 mile (from May 8, 1895), 81 trips a week. Brooklyn Heights railroad, Fulton and Johnson streets, to general post-office, 0.1 mile, 57 trips a week.

This service was properly required under paragraph 2 of the advertisement and provisions of the contract, and the tenth section of same.

Further, during the claimant's term of contract at Brooklyn, the department authorized regular railroad service on the Brooklyn Heights railroad on route 107143, terminating in the city of Brooklyn.

It became necessary, in consequence of the establishment of said railroad route, to provide service between the general post-office and the terminus of said route at Fulton and Johnson streets, and the claimant was required to provide for the same.

Details of the service required are as follows:

(*g*.) General post-office to Brooklyn Heights railroad, 0.1 mile (from January 7, 1895), 38 round trips a week.

This service was properly required under paragraph 2 of the advertisement and provisions of the contract, and the tenth section of same.

Further, during the claimant's term of contract at Brooklyn, the authorized regular railroad service on the Brooklyn, Bath and West End railroad, on route 107076, terminating in the city of Brooklyn.

This new railroad route superseded mail messenger route 207066, which was operated theretofore by the same railroad company, and terminated 3.66 miles from the post-office, between which points the claimant had been required under the advertisement to perform service.

Department required the claimant to provide for the service between the general post-office and the terminus of the railroad route, 0.01 of a mile, instead of between the general post-office and the mail messenger route, 3.66 miles. The same mails were carried and to the same road, but to a new and nearer terminus.

Details of the service superseded and that required in lieu thereof are as follows:

(*i*.) The service required under the advertisement was: General post-office to Brooklyn, Bath and West End railroad, 3.66 miles, 18 round trips a week.

The service required of claimant in lieu thereof was:

Same service (from June 25, 1894), but over a distance of 0.01 mile instead of 3.66 miles.

The miles of travel of which claimant was relieved *was*
64 11,506.01; the miles of travel required in lieu thereof *was* 31.38; a reduction in miles of travel of 11,474.63.

Even if it were not considered the same service the requirement

as to performance of which was more advantageous to claimant, it was, nevertheless, properly required under paragraph 2 of the advertisement and provisions of the contract and the tenth section of same.

In every instance excepting those covered by claims *f*, *g*, and *h*, the service required was the same service theretofore performed, but for a less distance, and in cases of claims *f*, *g*, and *h*, it was new service to new stations. In case covered by claim *i* it was to a new route and station, as well as being the same service.

If the claimant could recover for service specified in claims *a* to *i*, the measure of such recovery would not exceed the fair value of same, which is shown by the amounts paid contractors who immediately succeeded claimant's service, as follows:

Claims *a* and *b*, $142.01.
Claim *c*, $91.30.
Claim *d*, $111.58.
Claim *e*, $60.96.
Claims *f*, *g*, and *h*, service was subsequently covered by
(J. R.) general contract for regulation wagon service, $1020.00.
Claim *i*, $840.66.

XIII.

That on January 21, 1896, and during the term of said contract, defendant ordered claimant to discontinue the service so being performed by him on said route No. 207001, and pursuant to said order claimant was compelled to discontinue the performance of said service on March 1, 1896.

A copy of said order to discontinue is as follows:

"POST-OFFICE DEPARTMENT, *January* 21, 1896.

"Route 207001.

"Order No. 1432.

"Discontinue service from February 29, 1896, and allow contractor one month's extra pay.

(Signed) "WM. L. WILSON,
"*Postmaster-General.*"

XIV.

That said order to discontinue said service, described in the contract aforesaid, was not made on account of any neglect or default on the part of claimant in the performance of said contract. The right was asserted by the defendants to so order claimant to discontinue said services under the clause contained in said contract providing "that the Postmaster-General may discontinue the entire service whenever the public interest, in his judgment, shall require such discontinuance."

There was, however, no discontinuance of the service in carrying the mails on said route. Claimant had been previously offered the

(J. R.) privilege of continuing the service at a reduction from the contract rate, in the Boston case which he declined.

65

XV.

(J. R.) That thereupon in order to have the service as thus reorganized performed against the protest and objection of claimant and without his consent, defendants ordered claimant to discontinue said service (*supra*), and immediately thereafter defendants relet the same service (as decreased, as aforesaid), under said route No. 207001, to another for the balance of said contract period, namely, from March 1, 1896, to June 30, 1897, inclusive, a period of sixteen months, at a compensation of $9,720 per annum, said route being designated in said Chilton contract as No. 207004, and that said service was thereafter continuously performed by such other during the remainder of the contract period aforesaid.

XVI.

On September 15, 1893, the then Postmaster-General of the United States, acting therein for and on behalf of the United States, advertised for proposals for transporting the mails in various cities, and, among others, on route No. 257001, being the "covered regulation wagon mail messenger, transfer, and mail station service" at the city of Omaha, State of Nebraska.

XVII.

Pursuant to said advertisement and the matters therein contained, claimant, under the name of Luther Clay Slavens, Jr., filed with the department a proposal for the performance of said service, consisting of carrying the mails in said city of Omaha for the period named in said advertisement, to wit, from July 1, 1894, to June 30, 1898, inclusive, naming as the compensation to be received by claimant therefor the sum of $3,780 per annum; that said bid was duly accepted by the department, and thereafter, on December 21, 1893, claimant, under the name of Luther Clay Slavens, Jr., entered into a contract with the United States for the performance of said service during the period aforesaid.

A true copy of said contract appears in the petition.

XVIII.

During the term of claimant's contract for services in Omaha the Post-Office Department authorized and established two new railroad mail routes in that city, operated by the Omaha Street Railway Company, one between the Union depot and the Omaha post-office, Fourteenth and Dodge streets, and the other between Fourteenth and Dodge streets and South Omaha. One end of each of these routes terminated at Fourteenth and Dodge streets, which was a

junction and transfer point, such as is usual with street-car lines in cities for the accommodation of the public, and the other end of one of these routes terminated at the Union depot.

After the establishment of a railroad route between these points a large amount of the service theretofore performed by claimant in wagons between the points was thereafter performed by the street railway company over the railroad route. By reason of the establishment of these new railroad routes it became necessary to provide service between their termini at Fourteenth and Dodge streets and the post-office between the two routes (transfers) at that point, and between the terminus of one route and the Union depot. Though not so ordered, this service was in part performed in lieu of such service between the general post-office and the Union depot, of which the claimant had been relieved by reason of its performance by the street car company on the newly established railroad route.

The amount of service of which the claimant was thus relieved was 176.6 miles of travel per week, while the amount which was required of him in lieu thereof was 41.06 miles of travel per week—an actual reduction of 132.54 miles per week. Though the subsequent advertisement of the service included all that the claimant performed, and besides considerable other service which he did not perform (service which had been theretofore included under a mail-messenger route), yet the claimant's own estimate of the value of the combined service was only $347 per annum more than he was being paid for the lesser service; and out of the lowest nine bidders seven of them estimated by their proposals the value of the combined service at less than the amount which the claimant was being paid for the lesser service, the lowest bidder, and to whom the service was subsequently awarded, being $1,130 less.

The service thus established was a mere substitution of another manner of performing the same service contracted for and at an advantage to the claimant, and was otherwise properly required under paragraph 2 of the advertisement and provisions of the contract and the tenth section of the same.

Conclusion of Law.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the claimant can not recover, and his petition should be dismissed.

WRIGHT, J., delivered the opinion of the court.

As may be discovered by reference to the findings of fact, the claimant herein was given three separate contracts for the transportation of mails in covered regulation mail wagons, one in Boston, another in Brooklyn, and still another in Omaha.

There are items for compensation in the cases of all the contracts for service, claimed to have been rendered at defendant's request outside the terms of the contracts, as it has been alleged, and much argument has been urged upon our attention in support and refutation of the respective contentions of the parties in this regard. In addition to these items of so-called extras, the claimant insists upon compensation for carrying the mails between Back Bay and Brookline post-offices, the latter being outside the city of Boston; but as this service was performed without the knowledge or request of anyone having defendants' authority, this item, it is plain, can not be allowed, and it will be dismissed from the case without further notice. (Whitsell *v.* United States, 34 C. Cls. R., 5.)

The chief claim growing out of the Boston and Brooklyn contracts is for a discontinuance by the Postmaster-General of all the service described in, and which was being performed under, those contracts,
resulting, as has been argued by claimant, in a breach of the
67 contracts by the defendants, and consequent damage to him.

Both the right of the claimant to compensation for alleged extra services, and to damages for the termination of the services of the claimant, as was done, may be disposed of by correct interpretations of the contracts themselves.

In every essential particular, as relates to the points in question the contracts are alike, and in them claimant agreed to perform all new, or additional, or changed covered regulation wagon, mail, messenger, transfer, and mail-station service that the Postmaster-General might order during the contract term, without additional compensation, whether caused by change of location of post-office, stations, landing, or the establishment of others than those existing at the date of the contract, or rendered necessary, in the judgment of the Postmaster-General, for any cause, and to furnish such advance wagons or extra wagons from time to time for special or advance trips as the Postmaster-General might require as a part of such new or additional service; that the Postmaster-General might change the schedule and termini of the route, vary the routes, increase, decrease, or extend the service thereon, without change of pay; and that the Postmaster-General might discontinue the entire service whenever the public interest, in his judgment, should require such discontinuance, but for a total discontinuance of service claimant should be allowed one month's extra pay as full indemnity.

In support of the right to recover for the items of extra service, as he has described them, claimant has produced argument to prove that such services were extra services, as distinguished from new, or additional, or changed service, described in the contracts, for which no additional compensation should be given. The service so described was such as might be rendered necessary for any cause, in the judgment of the Postmaster-General. It must, of course, be connected with, or incident to, the covered wagon mail, messenger, transfer, and mail-station service, for such only is the subject-matter of the contracts. It is easily seen that the extra service claimed for

readily falls within the class or description of service specified in the contracts, or in part of, or incident to such service, rendered necessary for some sufficient cause. The discretion or judgment of the Postmaster-General, given by the contract, to determine the necessity of such service, ought not to be questioned, unless to prevent unwarranted or unjust interruptions of the contract rights vested in the claimant. It will not be presumed that officer required the performance of services not demanded by the exigencies of the business. Nothing appearing to the contrary, it will be assumed that the service required was necessary to the proper administration of the powers conferred by law upon the head of the department, which was clearly reserved by the stipulations contained in the contracts. The distinction endeavored to be pointed out between extra services and new and additional services is not seen. Extra or additional services are synonymous. There can be no difference in the meaning of the words, and whether called by the one or the other name the services equally fall within the description given to them by the contracts.

It is also insisted that the change of part of the service from covered regulation wagon to street-railway service was unwarranted by the contract. We are unable to give effect to the terms of
68 the contract giving authority to vary the routes, increase or decrease or extend the service thereon, without supporting the change to street railway service, the only effect of which was to decrease the service undertaken by claimant, and which was clearly authorized by the contracts. The cause or reason why such change, or decrease of service, might be made was not stated in the contracts, but left to the discretion of the Postmaster-General. It is true the contract provided that such decrease was to be without change of pay, and if this was the only provision of the contract in this regard, there would be much force in claimant's contention, but all the provisions of the contracts must be considered and given the effect intended by the parties when they were entered into.

After the service had been decreased, as stated, the Postmaster-General submitted to claimant a proposition, or suggestion, that he voluntarily relinquish part of the contract price for the continued performance of the services remaining after the change of a part thereof to the street railways, but claimant declined, in which, no doubt, he was clearly within his rights. In other words, he was under no obligation, under the contracts, to continue at a reduced price. So, therefore, the proposition and its rejection had no effect whatever upon the rights of either party, as defined by the contracts, and such were left to be determined by the provisions thereof, according to the terms and stipulations contained therein. The contracts gave to the Postmaster-General authority to discontinue the entire service whenever the public interest, in his judgment, should require such discontinuance, the claimant in such case, to be allowed one month's extra pay, as full indemnity, and this he did in the Boston and Brooklyn contracts.

Against this action of that officer it is argued that he discontinued the service because claimant declined to continue at a reduced rate, but we have not found the action of the officer was so influenced. We must presume, nothing appearing to the contrary—and it does not—such action was influenced solely because, in his judgment, the public interest required the discontinuance of claimant's services under the contracts in question. We can see, also, there was good reason for such conclusion. The service had been rightfully decreased, under the stipulations of the contracts, until the services remaining to be performed were not reasonably worth the original contract rate, and to have continued its payment would have been contrary to public interests, and while claimant was under no obligation to continue in the service at a reduced rate, the head of the department was obligated, as well by the duties of his high office as the provisions of the contract, to subserve the public interests in taking care that no unreasonable compensation was paid for the services actually performed.

It is insisted, however, that by the contracts was meant the discontinuance of the service entirely—that is, an abandonment of all mail service in the cities in question. The mere statement of this position, we think, is its own demolition. It is unreasonable to believe that it was in the mind of anybody, when the contracts were made, that all mail service in any of the cities named would ever be abandoned. Such clearly was not the intention of the parties, in the use of the language employed. That which was intended, however, and by the words of the contracts accomplished, was
69 that the performance of the entire service by the claimant might be discontinued by the Postmaster-General whenever the public interest, in his judgment, required it. The power reserved in the contract to the Postmaster-General to discontinue the entire service, whenever the public interests in his judgment should require it, was the same, and none other, than the power to annul the contract when his judgment advised that it should be done (Garfielde *v.* The United States, 93 U. S., 246); and this being true, the only effect of such annulment would be to discontinue the further performance by claimant of the service described in the contract, and not an abandonment, for future time, of the mail service in the cities mentioned, to be let and performed as in other cases.

In conformity to the views herein expressed, the petition of the claimant should be dismissed, and it is ordered accordingly.

NOTT, *Ch. J.*, dissenting:

1. Mr. Justice Davis, in the case of Otis (20 C. Cls. R., 315), laid down as the rule of construction for these mail-messenger contracts of the Post-Office that the "new or additional mail-messenger or transfer service" which is to be performed "without additional compensation" must be construed to mean service similar in nature to that required by the contract. He also held that a contract prepared at the Post-Office leaving the contractor no choice as to form

or phraseology must be construed in a doubtful case in favor of justice and against the Government. A more sound and just rule of construction was never laid down by a judge. The case was carried to the Supreme Court and affirmed (120 U. S. R., 115).

I perceive nothing in the present case which justifies me in departing from the decision in the case of Otis, followed as it has been by similar decisions in successive cases.

In previous cases it has been held that there is a difference "in kind" between a "mail station" and a "receiving station." The difference in kind between a street car and a post-office seems to me to be much more radical than the difference between a receiving station and a mail station. This system of carrying the mails on street cars did not exist when the contract was made; the claimant did not agree to meet street cars; he did not agree to meet street cars on time; he did not agree to wait for street cars behind time. The Postmaster-General had no right to try this experiment in city mail transportation at the claimant's cost. As was said in a recent case, "a new system of receiving stations" is not "new or additional transfer or mail station service;" and "extra service" is not new or additional service. For the one, the contractor can recover; the other must be performed without additional compensation.

(Union Transfer Co.'s Case, 36 C. Cls. R., 216.)

70 2. It is well settled that where a contract provides that additional work or service or material may be ordered only by a designated officer, such as the head of a department, a subordinate can not bind the defendants by directing the contractor to do additional work, even though the defendants receive a benefit therefrom. That is to say, if the Secretary of the Treasury intends to erect a building at a cost of $100,000, and stipulates that there shall be no additional work done, except when ordered by himself, the officer under whom the work is done can not make the defendants pay $110,000 for a better building than they contemplated erecting through their Secretary of the Treasury. But it is equally well settled that where service is rendered to the Government, which it needs and is invited by an officer having charge of such work, an implied contract will arise and the claimant will recover *in quantum meruit*. (Clark *v.* United States, 95 U. S. R., 539.)

What are the distinguishing facts in this case? The claimant was a contractor doing mail-messenger service in the city of Boston under a contract which, in effect, required him to do whatever the postmaster might order and direct. There were complaints that the railroad service by which the Brookline post-office was served was inefficient and unsatisfactory. The postmaster, supposing that Brookline was within the territory of the contractor and that the additional service would be performed without additional compensation, ordered the contractor to do it by wagon service. He complied, but appealed to the Postmaster-General, setting forth that the service was beyond his territory. The Postmaster-General called on the postmaster for explanations and investigated the facts; he

then approved the service and thereby ratified what had been done, and directed the postmaster to take measures for its unbroken continuance and for permanently carrying it on. When these arrangements had been made he relieved the contractor from performing. The case, therefore, is precisely like that of Otis (120 U. S. R., 115, 121, 123) where, under a similar contract, the postmaster in New York required the contractor to carry mails beyond his territorial field, viz., from New York to Jersey City, and where the Supreme Court held that this was extra service for which the contractor was entitled to recover.

71 VI.—*Judgment of the Court.*

LUTHER CLAY SLAVENS
v.
THE UNITED STATES. } No. 21973.

At a Court of Claims held on the 25th day of May, 1903, judgment was ordered to be entered as follows:

The court on due consideration of the premises find for the defendants and do order, adjudge and decree that the petition of the claimant, Luther Clay Slavens, be and is hereby dismissed.

BY THE COURT.

72 VII.—*Application for and Allowance of Appeal.*

LUTHER CLAY SLAVENS
v.
UNITED STATES. } No. 21973.

Comes now the above named claimant, by his attorney, and moves the court to allow an appeal herein to the Supreme Court of the United States, from the judgment in this case, dismissing claimant's petition May 25, 1903.

A. A. HOE-LING, JR.,
Attorney for Claimant.

Filed August 10, 1903.

Ordered, that the aforesaid application for appeal be allowed as prayed for.

BY THE COURT.

March 28, 1904.

73 Court of Claims, Washington, D. C.

LUTHER CLAY SLAVENS
v.
UNITED STATES. } No. 21973.

I John Randolph assistant clerk of the Court of Claims hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact and conclusion of law, of the opinion of the court and the dissenting opinion, of the judgment of the court dismissing the petition, of the application for and allowance of appeal to the Supreme Court of the United States.

Seal Court of Claims.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 5th day of April, A. D. 1904.

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

Endorsed on cover: File No. 19,303. Court of Claims. Term No. 228. Luther Clay Slavens, appellant, *vs.* The United States. Filed April 21st, 1904. File No. 19,303.

FILE COPY

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 228.

LUTHER CLAY SLAVENS, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF ON BEHALF OF APPELLANT.

A. A. HOEHLING, JR.,
Attorney for Appellant.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 13783

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 228.

LUTHER CLAY SLAVENS, APPELLANT,

vs.

THE UNITED STATES.

BRIEF ON BEHALF OF APPELLANT.

NOTE.—This case, by consent of counsel and order of court, is to be heard with the case of Wesley E. Travis *vs.* the United States, No. 84, October term, 1904. The question of law involved in that case, namely, the right of the Postmaster General to arbitrarily terminate, during its term, a contract for transportation of the United States mails, under a covered regulation wagon mail messenger, transfer, and mail station service, being, also, the main question of law involved in this case, it will not be necessary to reargue that question in this brief. The brief and argument, in that respect, in said other case will, therefore, be relied on the same as if repeated herein.

STATEMENT OF CASE.

The *facts* in this case, as found by the court below, are, in substance, as follows:

1. In pursuance of advertisement for proposals, in that behalf, for transporting the mails under the "covered regu-

lation wagon mail messenger, transfer, and mail station service," appellant entered into contracts with the United States covering mail service of said kind, at the places, for the periods, and at the compensation following:

(*a.*) City of Boston, Mass.; July 1, 1893, to June 30, 1897, inclusive; $49,516 per annum (*R.*, *41–2*).
(*b.*) City of Brooklyn, N. Y.; July 1, 1893, to June 30, 1897; $18,934 per annum (*R.*, *44*).
(*c.*) City of Omaha, Neb.; July 1, 1894, to June 30, 1898; $3,780 per annum (*R.*, *48*).

2. During the term of the BOSTON contract (*a*) appellee determined to dispatch certain of the mails embraced in the contract upon an electric street car line, West End Street Railway Co., and it thereby *decreased* the quantity and volume of the contract service.

Appellant was offered the privilege of continuing, under his contract, the performance of the service thus decreased, at a reduction from the contract rate; which he declined. Thereupon, on February 1, 1896, appellee undertook to arbitrarily terminate and discontinue the contract, for the reason above stated, and not because of any neglect or default on the part of the contractor, but under the alleged authority of the contract itself in that regard; and it, accordingly, relet the *same service*, under the same route, as so *decreased*, to another mail contractor for the remainder of said contract period, namely, from February 1, 1896, to June 30, 1897, inclusive, a period of seventeen months, at a compensation of $37,000 per annum; and the service was, thereafter, and during said remaining contract period, continuously performed by such other contractor; against all of which, appellant protested and objected, without avail (*R.*, *42–3*).

There was, however, no discontinuance of the service in carrying the mails on said route (*R.*, *43*).

3. The difference between the contract price thereof and the amount it would have cost appellant to perform the service, during said remaining seventeen months of the contract term, is the sum of $18,884.14 (*R.*, *43*).

4. The service embraced in said BOSTON contract required appellant to carry the mails—

> "between post-offices and railroad stations, between post-offices and steamboat landings, between post-offices and mail stations, and between the several railroad stations, steamboat landings, and mail stations, now established, or that may hereafter be established,"

as prescribed in the advertisement and contract; as well any and all new or additional service of the like kind, that might be ordered during the contract term (*R.*, *14*).

During the performance of service under that contract, appellant was required to perform the following service, alleged by him to have been *extra* and not embraced within the contract, and for which he claims compensation, as follows:

(*a.*) Carrying the mails between the mailing-room and basement of the general post-office, in said city of Boston, and the stopping place of a street car line, West End Street Railway Company, from May 1, 1895, to February 1, 1896; said service requiring appellant to employ two wagons, two horses, two drivers, and sometimes an extra wagon. The value of said alleged *extra* service, so performed by appellant, and for which he received no compensation, is $274.55 (*R.*, *42*).

(*b.*) Carrying the mails both ways, between the Back Bay post-office, Boston, and the Brookline post-office, a distance of 2¼ to 3 miles; said service being admittedly *not* embraced within the terms of the contract. Appellant protested to the postmaster at Boston against the requirement to perform this service, but, as found by the court below, did not so

protest to the Postmaster General, nor to any officer of his department, until August 14, 1894; whereupon, the Postmaster General relieved appellant of the requirement, and entered into contract with another to perform that service, and payment therefor was thereafter made to said other contractor. The value of the *extra* service so performed by appellant, and for which he received no compensation, is $462.50 (*R.*, *42*).

Both of the items of claim, (*a*) and (*b*), were disallowed by the court below, (*a*) because, in the opinion of said court, not an *extra* service; and (*b*) because, as stated in said opinion, the service was performed without the knowledge or request of any one having defendant's authority, (*R.*, *50–51*).

5. During the term of the BROOKLYN contract (*b*), appellee, likewise, determined to dispatch certain of the mails embraced in the contract upon an electric street car line, Brooklyn Heights railroad; and it thereby *decreased* the quantity and volume of the contract service.

Thereupon, on March 1, 1896, appellee undertook to arbitrarily terminate and discontinue the contract, for the reason above stated, and not because of any neglect or default on the part of the contractor, but under the alleged authority of the contract itself, in that regard; and it, accordingly, re-let the same service, under the same route, as so *decreased*, to another mail contractor, for the remainder of said contract period, namely, from March 1, 1896, to June 30, 1897, inclusive, a period of sixteen months, at a compensation of $9,720 per annum, (*R.*, *42–8*); and the service was, thereafter, and during said remaining contract period, continuously performed by such other contractor; against all of which appellant protested and objected, without avail (*R.*, *48*).

There was, however, no discontinuance of the service in carrying the mails on said route. In this case, the action of the Postmaster General, in so terminating the contract, was the first and only notice to appellant, presumably because

in the case of the prior action, in respect of the Boston contract, appellant had declined to submit to a reduction from the contract rate, (*R.*, *47–8*).

6. While evidence was introduced by appellant, showing a damage, (loss of profits), sustained by him by reason of the breach of this contract by the government, the court below omitted and declined to find any amount of loss thereby sustained by appellant.

7. The service embraced in said BROOKLYN contract required appellant to carry the mails—

> "between post-offices and railroad stations, between post-offices and steamboat landings, between post-offices and mail stations, and between the several railroad stations, steamboat landings, and mail stations, now established, or that may hereafter be established,"

as prescribed in the advertisement and contract; as well any and all new or additional service of the like kind, that might be ordered during the contract term (*R.*, *14*).

During the performance of service under that contract, the Postmaster General established mail service on a street car line, Brooklyn Heights railroad (being railway routes Nos. 207,805 and 207,807); and it, thereupon, required the contractor to perform service between the Brooklyn general city post-office and the mail route so established on the street car line, and between said mail route and the mail stations (*R.*, *44*).

The performance of this service required the contractor to deliver and receive mail dispatches to and from the street cars of said railroad at street crossings; the same, however, being, as contended by him, service of an entirely different kind from anything embraced within the contract.

The details of said *extra* service are set forth, in detail, in the petition, items (*a*) to (*i*), inclusive, (*R.*, *6–7*); and in like lettered items in the findings of fact, (*R.*, *44–47*).

The aggregate value of said several items of alleged *extra* service so performed by appellant, and for which he received no compensation, is $2,266.51 (*R.*, *47*).

The court below, however, rejected said claim for compensation, because, in its opinion, the service was properly required, under the terms of the contract, and, therefore, was not an *extra* service (*R.*, *51*).

8. The service embraced in said OMAHA contract required appellant to carry the mails as specified in the extracts from the contracts quoted in the above paragraphs 4 and 7, and the same, therefore, need not be here repeated.

During the performance of service under that contract, appellant was required to perform the certain alleged *extra* service set forth, in detail, in the petition, items (*a*) to (*d*), inclusive, (*R.*, *8*;) the same consisting in the delivery and receipt of mail dispatches, to and from street cars of the Omaha street railway, at street crossings; and being, as contended by appellant, service of an entirely different kind from anything embraced within the contract (*R.*, *48–9*).

The court below, however, omitted and declined to find any value in connection with said service, holding the same to have been "a mere substitution of another manner of per-" forming the same service contracted for and at an advan-" tage to the claimant, and was otherwise properly required " under paragraph 2 of the advertisement and provisions of " the contract, and the tenth section of the same" (*R.*, *49*).

9. Upon the foregoing facts, set forth in the findings of fact with greater detail, and further detailed and explained in the advertisement, instruction to bidders, and contracts, (hereinafter more particularly referred to,) the lower court decided, as matter of law, that claimant could not recover under any or either of the claims aforesaid; and, accordingly, entered judgment, dismissing his petition, (*R.*, *49*).

10. From that judgment, the present appeal was taken.

BRIEF.

ASSIGNMENT OF ERRORS.

The court below *erred:*

1. In holding that the Postmaster General had, under the facts found, the right to terminate and discontinue the Boston and Brooklyn contracts, respectively.

2. In failing to enter judgment for appellant for the amount of loss sustained by him by reason of the breach by appellee of each of said two contracts.

3. In holding that appellant cannot recover for the *extra* service required of him outside of the (city) limits of the Boston contract.

4. In holding that the service required of appellant, to and from street cars at street crossings, under the Boston, Brooklyn, and Omaha contracts, respectively, is not an *extra* service; and that appellant cannot recover therefor.

5. In failing to find the value of the service to and from street cars, so required of appellant in Omaha.

6. In failing to enter judgment for appellant for the value of each and every of the items of *extra* service aforesaid (3, 4, and 5).

7. In dismissing the petition of appellant, and entering judgment in favor of appellee.

The aggregate value of said several items of alleged *extra* service so performed by appellant, and for which he received no compensation, is $2,266.51 (R. 47).

IV. From that judgment, the present appeal was taken.

BRIEF.

The questions of law involved in this appeal may be conveniently considered and classified, as follows:

1. The right and authority, claimed and exercised by the Postmaster General, to arbitrarily terminate and discontinue the Boston and Brooklyn contracts, during the term of each thereof; such action being based upon the authority alleged to be contained in the contracts themselves, and asserted because the quantity and volume of contract service had been voluntarily decreased by the Postmaster General; but not, however, because of any breach of contract, neglect, or default on the part of the contractor; such action resulting in loss to appellant; and

2. The right of appellant to compensation for alleged *extra* services imposed upon and required of him under each of the three certain contracts, above referred to.

These propositions will be considered and discussed in the order stated.

I.

NO RIGHT IS RESERVED TO THE POSTMASTER GENERAL, UNDER EITHER OF THE CONTRACTS, TO TERMINATE OR DISCONTINUE THE SAME DURING THE CONTRACT TERM, BECAUSE OF A DECREASE IN QUANTITY AND VOLUME OF THE CONTRACT SERVICE.

Before considering the provisions of the Boston and Brooklyn contracts, bearing upon the proposition just stated, it may be useful to fix in mind the principles of law applicable in a case like the present, and which may be thus summarized:

(*a.*)

THE CONTRACT PROVISIONS ARE TO BE TESTED AND APPLIED BY THE SAME RULES OF LAW, AND GOVERNED BY THE SAME DECISIONS, AS IF ENTERED INTO BETWEEN INDIVIDUALS.

This proposition is carefully considered, and the authorities cited, in appellant's brief in the Travis case, (hereinabove referred to), and the attention of the court is accordingly asked thereto, (*pp. 3–5*).

The two contracts here under review were entered into in pursuance of lawful authority, and the only question involved is as to the relative rights of the contracting parties, as found in the contracts themselves, or in the law governing them—the relation between the parties being that of perfect equality in right. It, therefore, becomes important to ascertain the exact rights of each party, as fixed by the contracts.

(*b.*)

PROVISIONS OF THE BOSTON AND BROOKLYN CONTRACTS.

As has been shown, the Postmaster General undertook to terminate and discontinue, not the service, but the contracts of appellant for carrying the mails in the cities of Boston and Brooklyn, during the term of such contracts, respectively. In the Boston contract, seventeen months then remained of the contract term; and, in the Brooklyn contract, sixteen months.

It also, appears that the discontinuance was not made, in either case, on account of any breach of contract, neglect, or default on the part of appellant, in the performance of contract.

The quantity and volume of contract service had become, in each case, *decreased*, by the voluntary action of the Postmaster General in establishing a mail messenger service upon

an electric street car line, and certain of the mail dispatches, embraced within the contract service, were accordingly, thereafter, carried upon the street cars instead of in wagons of appellant; and this, in part, and to that extent, reduced and decreased the quantity and volume of the contract service.

In this situation of fact, the Postmaster General first offered appellant the alternative of an abatement (of $10,000) from his annual compensation under the Boston contract, or having the contract terminated and discontinued. Appellant insisted upon his contract rights, and declined to submit to the suggested abatement; and the order to discontinue promptly followed (*R., 42–3*).

In the Brooklyn contract, a summary order to discontinue was issued by the Postmaster General, without opportunity afforded appellant to elect, as above; presumably because he had insisted upon strict recognition of his contract rights in said other case, (*R., 47–8*).

In this discussion, it will not be necessary to examine each of said two contracts, inasmuch as they are precisely alike, so far as the question now under consideration is concerned, each containing the same conditions and limitations, and only differing in respect of dates, place of performance, and amount of compensation. Counsel will, therefore, refer to but one of said contracts, and the advertisement for proposals and instructions to bidders in connection therewith, namely the Boston contract, (Exhibit "A," *R., 10–18*; Exhibit "B," *R., 19–23*).

The following paragraphs are contained in the instructions to bidders:

> "2. The contractors under this advertisement will be required to perform, *without additional compensation, any and all new or additional service that may be ordered from July 1, 1893, or at any time thereafter during the contract term*, whether between post-offices and railroad stations, between post-offices and steamboat landings, between post-offices and mail stations, or between the several railroad stations, steamboat

landings, and mail stations, now established or that may hereafter be established, whether caused by the establishment of new or by change of site of existing post-offices, railroad stations, steamboat landings, or mail stations within said cities, or caused by the alteration of the routes made necessary for any other reason. Bids must be made with this distinct understanding, and must name the amount per annum for the whole service, and not by the trip.

"3. There will be no diminution of compensation for partial discontinuance of service, or increase of compensation for new, additional, or changed service that may be ordered during the contract term; but the Postmaster General may discontinue the entire service on any route whenever the public interest, in his judgment, shall require such discontinuance, he allowing, as full indemnity to the contractor, one month's extra pay.

"4. The Postmaster General may annul a contract for repeated failures," etc. (not here material) (*R.*, *14–15*).

The contract entered into with appellant, under said advertisement for proposals and instructions to bidders, required him to transport

> "the mails on route No. 204001, being the covered regulation wagon mail messenger, transfer, and mail station service at the city of Boston, Mass. * * * and all new or additional service of said kinds which may at any time during the term of this contract be required in said city, at $49,516. per year, for and during the term beginning the first day of July, 1893, and ending June 30, 1897" (*R.*, *19*).

The contract contained the following, further, provisions:

> "*Tenth.* To perform all new or additional or changed covered screen wagon mail station service that the Postmaster General may order at the city of Boston, Mass., during the contract term, without additional compensation, whether caused by change of location of post-office, stations, landing, or the estab-

lishment of others than those existing at the date hereof, or rendered necessary, in the judgment of the Postmaster General, for any cause, and to furnish such advance wagons or extra wagons from time to time for special or advance trips as the Postmaster General may require, as a part of such new or additional service.

* * * * * * *

"It is hereby stipulated and agreed by the said contractor and his sureties that the Postmaster General may change the schedule and termini of the route, vary the routes, increase, decrease, or extend the service thereon, without change of pay; and that the Postmaster General may discontinue the entire service whenever the public interest, in his judgment, shall require such discontinuance; but for a total discontinuance of service the contractor shall be allowed one month's extra pay as full indemnity.

* * * * * * *

"And it is further stipulated and agreed, that the Postmaster General may annul this contract for repeated failures," etc. (not here material).

* * * * * * *

"And this contract is further to be subject to all the conditions imposed by law, and the several acts of Congress relating to post-offices and post-roads" (*R., 21–2*).

The foregoing sufficiently indicates the contract provisions, so far as the same have any proper application to the facts here under review.

As above shown, the contract absolutely bound the contractor to perform, without additional compensation, all such new, additional, or changed, increased or extended, service as might be required of him during the contract term; and, on the other hand, it bound the United States to pay to the contractor the agreed rate of compensation, even should the service be decreased during the contract term.

Thus, according to the very letter of the contract, both parties were placed on an equal footing, and each took the risk and chance of a change in the amount of service required, be it an increase or a decrease, during the entire term, without any change in the amount of compensation to be paid by the one and received by the other.

The wording of the contract is so exceedingly plain and free from all ambiguity that it would hardly seem to admit of serious argument in support of a contention so utterly in defiance of and in direct conflict with its said provisions, as one that seeks to impose upon the contractor the obligation to perform the service, even if increased or extended, without additional compensation; and yet permits the United States to break the contract because the volume of service happens to be decreased, and some other contractor is willing to perform the decreased service at a lower price.

(*c.*)

THE ACTION OF THE POSTMASTER GENERAL IN THIS CASE CONSTITUTED A BREACH OF SAID TWO CONTRACTS WITH APPELLANT; AND THE CONTENTIONS URGED IN DEFENSE ARE UNTENABLE IN LAW.

If appellee saw fit, during the contract term, to *decrease* the amount of service required, whether by the curtailment or partial discontinuance thereof, or by adopting, for a part of the service, some other kind of a mail messenger—for example, an electric street railway line—that was its privilege; but, as the contract expressly stipulated that such decrease in amount of service required should not change or reduce his pay, the contractor was entitled to all benefit and profits, if any, that would result from such decrease in the service required.

The appellant had a right to rely upon the terms and provisions of the contract, according to the natural and

ordinary meaning of the words used; and he had a right to assume that the covenant to pay a fixed rate of compensation per annum, for the contract period, unaffected by either an increase or decrease in quantity and volume of service required, was equally binding upon the government as upon himself, and that that covenant to pay meant just exactly what it said, nothing more and nothing less.

The government, however, here seeks to create and impose a new contract upon appellant, after breach on its part, by seeking to inject into the contract an extraordinary condition that not only finds no support from anything contained in the contract, but one that is absolutely inconsistent with and repugnant to the contract.

(*d.*)

THE SERVICE EMBRACED IN THE CONTRACT IS A COVERED REGULATION WAGON MAIL MESSENGER, TRANSFER, AND MAIL STATION SERVICE IN A CITY.

It must be borne in mind that the service embraced in each of said two contracts is "a covered regulation wagon "mail messenger, transfer, and mail station service" in a city, such service being based, not upon number of trips or mileage, but upon a fixed annual rate of compensation for the *whole* service, unaffected by either additions to or curtailment of the contract service:

> "Bids must be made with this distinct understanding, and must name the amount per annum for the *whole service*, and not by the trip" (Instructions to bidders, *R.*, *14*).

This, therefore, is radically and distinctly different from a railroad, steamboat, or star-route service, which latter is readily placed and estimated upon a mileage basis, with an increase of compensation for an increase in service, (section

813, Postal Laws and Regulations;) and a decrease of compensation for a decrease in service, (section 817, *id.;*) the change of compensation, in either case, increase or decrease, to be prorated, *i. e.*, the exact proportion which the original compensation bears to the original service.

The government, however, in order to justify its action, undertakes to ignore the contract provisions, and to maintain that the right to "discontinue the entire service" is the legal equivalent of the right "to discontinue the contract;" and, furthermore, that said section 817, (*supra*,) in any event, would confer that right in order to place on the route a superior service.

The court below, however, found that there was, in fact, no discontinuance of service in carrying mails on the route, (*R., 43, 47;*) hence, the action cannot be justified upon that hypothesis.

That section 817, (*supra*,) relating to an entirely different kind of mail service (railroad, steamboat, and star-route,) furnishes no justification for the action complained of, is equally apparent.

Sections 808, 813, and 817, of said Postal Laws and Regulations, have been set forth, at length, in said brief in the Travis case, (pp. 14-15,) and the attention thereto of the court is asked, without here repeating the same.

Without repeating the argument and citation of authorities so set forth in said brief in the other case, but by reference, adopting the same on behalf of the appellant in this case; it is submitted that the judgment of the court below, in respect of the action of the Postmaster General in so terminating and discontinuing the Boston and Brooklyn contracts, during the contract term of each thereof, was erroneous in law; and that appellant should be adjudged to recover the loss sustained by him by reason of said breach of contract.

II.

APPELLANT IS ENTITLED TO RECOVER THE VALUE OF THE EXTRA SERVICES REQUIRED OF HIM, AND WHICH WERE NOT EMBRACED WITHIN THE CONTRACTS.

The claim of appellant for *extra* compensation may be divided into two classes; one, service required, under the Boston contract between the Back Bay post-office, (in the city of Boston), and the post-office at Brookline, (the latter being outside of the city limits of Boston); and, the other, service in delivering and receiving mail dispatches to and from the street cars, of a street railway line, at street crossings, under each of the three contracts, Boston, Brooklyn, and Omaha.

Considering the claims in the order stated:

(*a.*)

EXTRA SERVICE BETWEEN THE BACK BAY (BOSTON) AND BROOKLINE POST-OFFICES.

During a part of the contract term, appellant was required to carry the mails between the Back Bay post-office (Boston), and the Brookline post office, a distance of 2½ to 3 miles, the latter office being outside of the city limits of Boston, and in an independent town, and which service was admittedly *not* embraced within the contract.

He performed the service, (under protest made to the city postmaster at Boston), from February 12, 1894, to August 14, 1894, when, upon complaint by appellant to the Postmaster General, the latter ordered its discontinuance, and entered into contract to have the service performed by another person, and made payment for the service so thereafter performed by said other person. The value of the *extra* service so performed by appellant, as found by the

court below, and for which he received no compensation, is $462.50 (*R., 42*).

The court below, in its majority opinion, thus disposed of the claim, (*R., 10*):

> "As the service was performed without the knowledge or request of anyone having defendant's authority, this item, it is plain, cannot be allowed, and it will be dismissed from the case without further notice" (Whitsell *vs.* United States, *34 C. Cls. R., 5*).

The Whitsell case, however, does not support the holding. In that case, a mail contractor had been relieved of a substantial part of his route, and a certain other route given him, in lieu thereof, by the local postmaster. He performed the changed service without objection or protest, during the entire contract period of six years. After the contract had been fully performed, he brought suit in the Court of Claims, to recover for the alleged extra service. That court, under the facts referred to, held that by his silence, claimant construed his own action, and thereby made known his real intention, and that he could not afterwards be heard to deny it. The court did not, however, undertake, in that case, to hold that no recovery could be had in any case where the service had been ordered by a postmaster instead of by the Postmaster General.

What it held, is thus stated in the opinion:

> "It is true that the government received the benefit of the service rendered by the claimant, and if the same had been performed under circumstances indicating a purpose on the part of the claimant to seek compensation therefor, the court might be authorized to imply a contract therefor and permit a recovery for the *quantum meruit*" (*34 C. Cls., 10*).

The law properly applicable to the claim is, it is submitted, accurately stated in the dissenting opinion below, in this case, of Nott, Ch. J.:

"It is well settled that where a contract provides that additional work or service or material may be ordered only by a designated officer, such as the head of a department, a subordinate cannot bind the defendants by directing the contractor to do additional work, even though the defendants receive a benefit therefrom. * * * But it is equally well settled that when service is rendered to the government, which it needs, and is invited by an officer having charge of such work, an implied contract will arise and the claimant will recover *in quantum meruit*, (Clark *v.* United States, *95 U. S., 539*).

* * * * * * *

"The postmaster, supposing that Brookline was within the territory of the contractor, and that the additional service would be performed without additional compensation, ordered the contractor to do it by wagon service. He complied, but appealed to the Postmaster General, setting forth that the service was beyond his territory. The Postmaster General called on the postmaster for explanations and investigated the facts; he then approved the service and thereby ratified what had been done, and directed the postmaster to take measures for its unbroken continuance and for permanently carrying it on. When these arrangements had been made he relieved the contractor from performing. The case, therefore, is precisely like that of Otis (*120 U. S. R., 115, 121, 123*) where, under a similar contract, the postmaster in New York required the contractor to carry mails beyond his territorial field, viz., from New York to Jersey City, and where the Supreme Court held that this was *extra* service for which the contractor was entitled to recover" (*R., 53–4*).

It is, therefore, submitted that an allowance should have been made to appellant in respect of this item; and that the lower court erred, in matter of law, in rejecting it.

(*b.*)

EXTRA SERVICE IN DELIVERING AND RECEIVING MAIL DISPATCHES, TO AND FROM THE STREET CARS OF A STREET RAILWAY LINE, AT STREET CROSSINGS, UNDER EACH OF THE THREE CONTRACTS, BOSTON, BROOKLYN, AND OMAHA.

As above shown, appellant had three (3) separate contracts, covering the "covered regulation wagon mail messenger, transfer, and mail station service," at and in the cities of Boston, Brooklyn, and Omaha, respectively. So far as the question of this *extra* service is concerned, the contracts are identical, and, hence, it will not be necessary to separately consider the provisions of the several contracts.

This service, as stated in the advertisement and instructions to bidders was required to be performed—

> "between post-offices and railroad stations, between post-offices and steamboat landings, between post-offices and mail stations, and between the several railroad stations, steamboat landings, and mail stations, now established, or that may hereafter be established,"

as therein prescribed; as well, also, any and all new or additional service of said kinds that might be ordered during the term of the contract (*R., 14*).

These requirements, set forth in the advertisement, were carried into the contract and made part thereof (*R., 19*), which contract specified that claimant should "take the mail from and deliver it into the post-offices, mail stations, and cars at such points and at such hours, under the direction of the postmaster at * * *, approved by the Postmaster General, as will secure dispatches and connections and facilitate distribution;" that he should furnish sufficient wagons "for the prompt and proper performance of the service" (*R., 20*), and, further, that he should "per-

form all new or additional or changed covered regulation wagon mail messenger, transfer, and mail station service that the Postmaster General may order * * * during the contract term, without additional compensation, whether caused by change of location of post-offices, stations, landings, or the establishment of others than those existing at the date hereof, or rendered necessary, in the judgment of the Postmaster General, for any cause, and to furnish such advance wagons or extra wagons from time to time for special or advance trips as the Postmaster General may require as a part of such new or additional service" (*R., 21*).

It is important to bear in mind the distinction between "new or additional service," which appellant contracted to perform without additional compensation; and "extra" service, which he did not contract to perform without additional compensation.

In the case of Otis, (*20 C. Cls., 315, 326,*) the lower court, in construing a mail contract similar to those here under consideration, held:

> "The 'new' service contemplated was service similar in its nature to that embraced in the general intent of the contract, such as that becoming necessary through the establishment of a new railroad station or steamboat landing in New York, while 'additional' service was to be an increase of the service which the contract as a whole contemplated, not an increase of an exceptional service which more properly might form part of another instrument."

That case was affirmed, on appeal, by this court (*120 U. S., 115*).

Speaking of said decision in the Otis case (*supra*), the dissenting opinion below, in this case, stated:

> "Mr. Justice Davis, in the case of Otis, * * * laid down as the rule of construction for these mail messenger contracts of the post-office that the 'new or additional mail messenger or transfer service'

> which is to be performed 'without additional compensation' must be construed to mean service similar in nature to that required by the contract. He also held that a contract prepared at the post-office leaving the contractor no choice as to form or phraseology must be construed in a doubtful case in favor of justice and against the Government. A more sound and just rule of construction was never laid down by a judge. The case was carried to the Supreme Court and affirmed" (*R., 52–3*).

And in the case of the Union Transfer Co. (*36 C. Cls., 216, 227*) said lower court again defined the expression in a like mail contract case as follows:

> "New or additional service must be such service as only increases the *volume* of the service specified in the contract."

And again, in the latest decision of said lower court, upon the same subject, in the case of Utah, Nevada, and California Stage Co. (decided April 25, 1904, but not yet reported), wherein it was held:

> "It must, therefore, be regarded as the settled rule of decision of this court that the 'new or additional 'mail messenger or transfer service' which is to be performed 'without additional compensation' is one thing, and that service which is different in kind and character is another; and that for the former the contractor cannot recover, but for the latter he may.
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> * * * * * *
>
> "Accordingly, it has also been held that the department might multiply the number of branch post-offices and stations and increase the wagon trips to and from the railroads and between the general post-office and the branch post-offices and stations, but could not bring into the contract a new subject-matter and compel the contractor to render without compensation a service which he had not contracted to perform."

Having thus established that there is a well defined and recognized legal distinction, in such mail contracts, between "new or additional" service, and service which is of different kind and character, namely, "extra," let us consider the distinguishing facts in this case:

The contracts contemplated a wagon mail messenger, transfer, and mail station service, in a city, between the post-offices, railroad stations, steamboat landings, and mail stations, and between each thereof.

The system of carrying mails on the street car lines did not exist when the contracts were made; in fact, the carrying of mails by street railway lines is so essentially different that, since July 1, 1896, it has been officially designated and classified as "street railway service," as distinguished from other railroad service.

During the term of these contracts, the Postmaster General, in order to provide each of the cities, (Boston, Brooklyn, and Omaha,) with improved mail facilities, established a mail service on the street car lines; and, thereupon and thereafter, required the contractor to perform service between the post-office and the mail route so established on the street car lines, and between the latter and the mail stations (*R., 42, 44–46, 48–49*).

The performance of this service required the contractor to meet the street cars at a mere stopping place at a street crossing, (which was neither a post-office, branch post-office, railroad station, steamboat landing, or a mail station,) and there await the arrival of the street cars, and to make and receive deliveries of mail to and from such street cars.

In short, the Postmaster General having employed and designated a street railway line as a mail messenger, proceeded, in furtherance of such *new system* of carrying the mails, to require the contractor to supply a necessary and connecting link in the chain of such radically different form and kind of mail service, namely, to make mail connections with street cars at street crossings.

This clearly was not carrying the mails between the post-office and a railroad station, steamboat landing, or mail station, or between any or either of such designated places. It was not service of a kind in contemplation of either of the parties at the time of entering into the contract; it was not specified or referred to in either the advertisement for proposals, instructions to bidders, or contract; and it was neither new nor additional service of like kind with that referred to in either said advertisement, instructions, or contract; but was an entirely different kind and character of service, namely, transporting the mails between the post-office, the mail stations, and a street car railway line, at given points (street crossings) on its line of route where the cars stopped to receive and make deliveries of mail matter,—in short, an *extra* service, entirely outside of the contract.

The situation is well summed up in said dissenting opinion herein:

> "In previous cases it has been held that there is a difference 'in kind' between a 'mail station' and a 'receiving station.' The difference in kind between a street car and a post-office seems to me to be much more radical than the difference between a receiving station and a mail station. This system of carrying the mails on street cars did not exist when the contract was made; the claimant did not agree to meet street cars; he did not agree to meet street cars on time; he did not agree to wait for street cars behind time. The Postmaster General had no right to try this experiment in city mail transportation at the claimant's cost. As was said in a recent case, 'a new system of receiving stations' is not 'new or additional transfer or mail station service;' and 'extra service' is not new or additional service. For the one, the contractor can recover; the other must be performed without additional compensation (Union Transfer Co.'s case, *36 C. Cls. R., 216*)" (*R., 53*).

(c.)

THE DECISION BELOW IS IN CONFLICT WITH BOTH PRIOR AND SUBSEQUENT DECISIONS OF THAT COURT IN SIMILAR MAIL CONTRACT CASES.

In the dissenting opinion herein, to which reference has been above made, it is further stated:

> "I perceive nothing in the present case which justifies me in departing from the decision in the case of Otis, followed as it has been by similar decisions in successive cases" (*R., 53*).

That the Chief Justice was correct in so stating is apparent from a consideration of said decisions:

In the Otis case, (*20 C. Cls., 315*) it was held, that a contractor for wagon mail messenger service in the city of New York could not be required to take the mails beyond the city limits, (to the Pennsylvania Railroad depot at Jersey City,) under the guise of "new or additional mail messenger or transfer service." (*S. C. affirmed, 120 U. S., 115.*)

In the case of Knox, exr, (*30 id., 59*), the contractor for a wagon mail messenger, transfer, and mail station service in the city of Washington, (the contract containing the usual requirements for the performance, without additional compensation, of "all new or additional service,") was required to haul a large number of mail bags and sacks to and from a repair shop, the latter having been established by the Postmaster General, and by him officially designated a branch post-office, as "Station I."

It was held, that this service was neither new nor additional, in kind, to the service contemplated, and that officially designating the repair shop as a branch post-office did not make it one in fact; that the new and additional service contemplated by the contract is service between the post-offices and mail stations and railway stations, to neither of

which several classes does a repair shop belong. The claimant was, accordingly, adjudged to recover for said *extra* service.

In the case of Woolverton (*34 id., 247*) a mail contractor, under a similar wagon mail messenger, transfer, and mail station service, was required to make collections from "substations," such as are found in ordinary mercantile shops, and differing only from the ordinary lamp-post box in that the latter is "out of doors" whereas the former are placed "indoors," inside of the shops. His contract required, among other things, delivery of mail at a railroad station in Jersey City, but the postmaster compelled him to also carry local Jersey City mail; he was also required to carry empty and damaged mail bags to the repair shop in New York city; and he was further required to carry and transport from the Grand Central depot, in New York city, to the subtreasury building, in the same city, $20,000,000 in gold. He claimed compensation for each of said items of service, alleging the same to be "extra," and not embraced within his contract.

The court sustained his claim as to each of said items; and, in its opinion, again defined the legal distinction between the service properly required under such a mail contract, and that which is *extra*. It also points out that such a contract does not require the collection of mail matter from substations or street boxes.

In the case of the Union Transfer Co. (*36 id., 216*), under a like mail contract, the Postmaster General, during the term thereof, established some seventeen "receiving stations," where mail matter could be deposited for dispatch, and the contractor was required to collect and distribute the same therefrom. This service the court held to be *extra*, and thus stated:

> "Before and at the time of the making of the agreement the collection and distribution of mail and mail matter, as shown by the findings, was made by

> letter-carriers, and while the department had the right to establish branch offices, dependent upon the necessities of the service, it had no right to establish a new system and require the claimant to perform the service of collecting mail and distribution of mail matter as contradistinguished from the service of carrying mail and mail matter as incident to a branch office."

And, finally, in its latest decision touching the same question, the case of the Utah, Nevada, and California Stage Co. (*supra*), said court, in distinguishing between the two kinds of service, "new or additional" and "extra," thus expressed the same conclusion and doctrine:

> "It was service different in kind and character, because it was incidental and consequent to the introduction of a condition into the city postal service which had never been there before—the establishment of a new post-office system.
>
> * * * * * * *
>
> "Accordingly, it has also been held that the department might multiply the number of branch post-offices and stations and increase the wagon trips * * * but could not bring into the contract a new subject-matter and compel the contractor to render without compensation a service which he had not contracted to perform.
>
> "Thus, where the contractor had agreed to carry the mails from the general post-office in New York to the railroads in Jersey City, * * * he could not be required to carry them to the Jersey City post-office; and where he had agreed to carry them between the general post-office and the branch post-offices and stations in the city, * * * he could not be required to carry them to numerous newly devised substations of a different character, scattered about the city in apothecaries and cigar shops. In a word, the subject-matter of the contract was held to be the administrative system of the postal service in the city *as it existed when the contract was made*, with

such additions or abbreviations as might be expressly set forth in the contract.

* * * * * * *

"To hold otherwise would be to hold that this carefully prepared contract, with the elaborate specifications thereto annexed, might be reduced to three lines: 'The undersigned, in consideration of $—, 'covenants and agrees that during the next four years 'he will do whatever the Post-Office Department bids 'him.'"

It is utterly impossible to reconcile the decision below in this case with the prior as well subsequent decisions of the same court, to which full reference has now been made.

Under those decisions, the conclusion is irresistible that the service for which recovery is here asked was neither "new nor additional" to any service of the kind embraced in or contemplated by either of the three contracts; and that it was service required in pursuance of, and made necessary by, the establishment of a new (experimental) system of carrying the mails in cities, upon street cars, the same constituting, therefore, a new subject-matter.

Hence, under all of the decisions of the Court of Claims, (other than that here under review.) the services so required of and performed by the appellant contractor were *extra*, for which he is entitled to receive compensation.

The reasoning of the court below, in its majority opinion, in rejecting this claim of appellant is neither convincing nor sound.

As to the service so required in Boston, between the mailing room and basement of the general post-office and the West End Street Railway Company, on Water street, of the value, as found, of $274.55; it holds the same to have been properly required under the contract (*R., 51*).

As to the service so required in Brooklyn, between the general post-office, various of the mail stations, and divers stopping places of the Brooklyn Heights street railway, at

street crossings, of the value, as found, of $2,266.51; it likewise holds the service to have been properly required under the contract; and, furthermore, it finds and holds that, the Postmaster General having established a mail messenger service upon the street-car line, between certain of the terminal as well as intermediate points of the routes embraced in the contract, the contractor was thereby relieved of carrying the mails between such points, and that, inasmuch as he was thereafter only required to carry and deliver the mails to, and receive the same from, the street cars at each of said terminal and intermediate points, he was really benefited to the extent of the difference of mileage so saved in the actual distance of the haul required; and the court below proceeded to find the exact difference in such mileage; and thereby came to the conclusion that the imposition of this *extra* service upon the contractor was really a benefit (*R., 44, 51*).

As to the service so required in Omaha, between the general post-office and street cars, the court, also, found that the establishment of such mail route on a street-car line operated to reduce the mileage of haul required by the contract; and thus, to that extent, relieved and benefited the contractor; and that the service thus required, *i. e.*, meeting street cars, and making and receiving dispatches of mail, "was a mere substitution of another manner of performing "the same service contracted for and at an advantage to "the claimant, and was otherwise properly required under * * * the contract" (*R., 49*).

Having reached that conclusion, the lower court omitted and declined to find the value of the service between the general post-office and the street cars, so performed by the contractor, in Omaha; although it does refer to the bid made by the same contractor, under a subsequent advertisement for the decreased service, as well as the bid of the subsequent lowest bidder therefor—neither of which facts, it is submitted,

having any legal bearing upon this claim for extra service, nor the value thereof.

The fallacy of such reasoning and holding is most apparent, when taken in connection with the contract. That contract provided, in no uncertain terms, that the service therein stipulated and required might be increased, decreased, or extended, and new or additional service of a like kind put on *without change of pay*.

If defendant saw fit during the term of the contract to *decrease* the amount of service required, whether by the curtailment or partial discontinuance thereof or by adopting for a part of the service some other kind of a mail messenger—for example, a street railway line—that was its privilege, but as the contract expressly stipulated that such decrease in the amount of service required should not change or reduce the pay, the contractor was entitled to all benefits and profits, if any, which resulted from such *decrease* in the service.

The government imposed upon the contractor service of a totally different kind and character, which was clearly an *extra* service not embraced in either the advertisement or contract; and when he presents a claim for compensation for that extra service, he is met with the reply that the service was *decreased*, and the amount saved to him by such decrease will more than compensate for the extra service he was required to render.

In other words, defendant here seeks to use, as a set-off against a perfectly legal and valid claim for *extra* service rendered by the contractor, a supposed benefit and profit which resulted to him because of a *decrease* in the amount of service required of him, and to which benefit and profit the defendant has not a shadow of a claim.

It is submitted that any such contention is specious and cannot operate to deprive the contractor of the fair and reasonable value of the *extra* service so required of and rendered by him.

If the service so required was *extra*, (as it undoubtedly was,) it continued so to be, and appellant is entitled to be paid the value thereof, and it cannot be traded off or set up against any benefit or right that legitimately accrued to him under the contract; and it is unavailing to say that, because by performing this totally different kind of a service, (and for which he did not contract,) to meet the exigencies of a new kind, character, and system of mail messenger (street car line,) he was relieved and benefited in the matter of mileage haul required. To that benefit, he was entitled under his contract; and the Government has no right to use it as a set-off in payment, in whole or in part, of an *extra* service which it required appellant to perform, outside of his contract, and for which he is entitled to be paid.

The extent to which such illogical reasoning necessarily leads is well shown in this case: *first*, the contract service is, in part, changed, and the contractor is made to meet street cars at mere street intersections and crossings, and to deliver and receive dispatches of mail; and his claim for compensation for that service as an *extra* is disposed of, by holding that he was really benefited thereby, as the establishment of a mail route on the street cars relieved him of considerable mileage haul under his contract, namely, *decreased* the quantity and volume of contract service, and that the one offsets the other; and, *second*, because of the same *decrease* in quantity and volume of contract service, and because the contractor declined to submit to an abatement from his contract compensation, the Postmaster General proceeds to take away his contract, and when compensation is sought as to that item, he is met with the response that his contract service had become *decreased*, and that, therefore, the action was authorized by the contract.

If these contentions, either or both, be legally tenable and sound, it would appear that mail contracts are binding *only* upon the contractor; and that the language used in the

opinion of the court below in the Utah, Nevada and California Stage Co. case (*supra*) is here singularly applicable:

> "The undersigned, in consideration of $—, covenants and agrees that, during the next four years, he will do whatever the Post-Office Department bids him,"

without additional compensation, and reserving to the Postmaster General the right to terminate the contract at pleasure.

Without further prolonging the argument, it is submitted that the conclusion of the court below, in respect of each and every of the foregoing items of claim for *extra* service, is erroneous in law.

III.

THE JUDGMENT BELOW, DISMISSING THE PETITION OF APPELLANT, IS ERRONEOUS, AND SHOULD BE REVERSED.

From what has been above shown, it results that the action of the Postmaster General, in terminating and discontinuing the Boston and Brooklyn contracts, was without lawful authority or right, and constituted a breach of contract, for which the Government is answerable to appellant in, at least, the sum of $18,884.14, less a credit of $4,126.33, as found by the court below (finding IX, *R.*, *43*), the same representing the measure of recovery for the breach of the Boston contract: said court having omitted and declined to find any loss of profit or damage sustained by appellant by reason of the breach of the Brooklyn contract.

And appellant is, further, entitled to recover, as hereinabove shown, for the several items of *extra* service performed by him:

Service between the Back Bay (Boston) and Brookline post-offices.....	$462.50
Service in Boston, to and from the street cars.....	274.55
Service in Brooklyn, to and from the street cars..	2,266.51
	$3,003.56

And, finally, he is entitled to recover the reasonable value of the like service in Omaha, to and from street cars, but which the court below held to be "a mere substitution of another manner of performing the same service contracted for and at an advantage to the claimant," and, accordingly, omitted to make any finding in respect of the value thereof.

It is respectfully submitted that the judgment below should be *reversed*, and that the cause should be remanded with directions to enter judgment in favor of appellant in respect of the several items aforesaid, as well also for the value of said extra service under the Omaha contract, the latter to be found by said court.

A. A. HOEHLING, JR.,
Attorney for Appellant.

WASHINGTON, D. C.,
November 23, 1904.

In the Supreme Court of the United States.

OCTOBER TERM, 1904.

LUTHER CLAY SLAVENS, APPELLANT,
v.
THE UNITED STATES. } No. 228.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

NOTE.

This case, by consent of counsel and order of court, is to be heard with the case of *Wesley E. Travis* v. *The United States*, No. 84, October Term, 1904. The question of law involved in that case, namely, the right of the Postmaster-General to discontinue the service under a covered regulation wagon mail messenger, transfer, and mail station service contract, is one of the questions also involved in this case, and with respect to that one question the brief and argument in the Travis case is relied upon the same as if set forth here, with only such brief mention as will make this case clear.

STATEMENT.

THE BOSTON CONTRACT.

On September 15, 1892, the Postmaster-General, acting therein, on behalf of the United States, advertised for proposals for transporting the mails in various cities, and among others on route No. 204001, being "covered regulation wagon mail-messenger, transfer, and mail-station service," at the city of Boston, Mass. (Rec., p. 41.)

This advertisement contained instructions to bidders, among which was the following:

> The contractor under this advertisement will be required to perform, *without additional compensation, any and all new or additional service that may be ordered from July 1, 1893, or at any time thereafter during the contract term*, whether between post-offices and railroad stations, between post-offices and steamboat landings, between post-offices and mail stations, or between the several railroad stations, steamboat landings, and mail stations now established, or that may hereafter be established, whether caused by the establishment of new or by change of site of existing post-offices, railroad stations, steamboat landings, or mail stations within said cities, or caused by the alteration of the routes made necessary for any other reason. Bids must be made with this distinct understanding, and must name the amount per annum for the whole service, and not by the trip. (Rec., p. 14.)

And also the following:

> Bidders must inform themselves as to the distance, the running time, the weight of the mails, the condition of hills, streets, toll bridges, ferries, and obstructions of all kinds whereby expense may be incurred, and as to the *probable increase, additional service, or changes likely to be rendered necessary.* Claims for additional pay based on such grounds, or for alleged mistakes or misapprehensions as to the service required, or for bridges destroyed or ferries discontinued can not be considered. (Rec., p. 15.)

And also the following:

> There will be no diminution of compensation for partial discontinuance of service or increase of compensation for new, additional, or changed service that may be ordered during the contract term; but the Postmaster-General may discontinue the entire service on any route whenever the public interest, in his judgment, shall require such discontinuance, he allowing, as full indemnity to the contractor, one month's extra pay. (Rec., pp. 14, 15.)

Pursuant to said advertisement and the matters contained therein, the claimant made and filed with the Department a proposal for the performance of said service for the period named therein, namely, from July 1, 1893, to June 30, 1897, inclusive, naming as the rate of compensation to be received therefor $49,516 per annum. (Rec., pp. 41, 42.)

Claimant's proposal was duly accepted by the Department, and on December 21, 1892, a contract was

entered into between him and the United States for the performance of the service accordingly, and thereupon the claimant engaged in the carrying of the mail thereunder. (Rec., pp. 19, 20, 21, 22, 23, 42.)

The contract so entered into referred to the advertisement and provided that by such reference the advertisement was thereby made a part of itself, and specifically stated that the contractor had been accepted to perform the service advertised, "and all new or additional service of said kinds which may at any time during the term of this contract be required in said city." (Rec., p. 19.)

By the second covenant of the contract, the claimmant contracted—

> To take the mail from, and deliver it into, the post-offices, mail stations, and cars at such points, and at such hours, under the directions of the postmaster at Boston, Mass., approved by the Postmaster-General, as will secure dispatches and connections and facilitate distribution, and at the contractor's expense for tolls and ferriage. (Rec., p. 20.)

By the tenth covenant of the contract, the claimant contracted—

> To perform all new or additional or changed covered regulation wagon, mail messenger, transfer, and mail-station service that the Postmaster-General may order at the city of Boston, Mass., during the contract term, without additional compensation, whether caused by change of location of post-office, stations, landings, or the establishment of others than those

> existing at the date hereof or rendered necessary, in the judgment of the Postmaster-General, for any cause, and to furnish such advance wagons or extra wagons from time to time for special or advance trips as the Postmaster-General may require, as a part of such new or additional service. (Rec., p. 21.)

The contract further provided;

> It is hereby stipulated and agreed by the said contractor and his sureties that the Postmaster-General may change the schedule and termini of the route, vary the routes, increase, decrease, or extend the service thereon, without change of pay; and that the Postmaster-General may discontinue the entire service whenever the public interest, in his judgment, shall require such discontinuance; but for a total discontinuance of service the contractor shall be allowed one month's extra pay as full indemnity. (Rec., p. 21.)

A further provision was as follows:

> And this contract is further to be subject to all the conditions imposed by law, and the several acts of Congress relating to post-offices and post-roads. (Rec., p. 22.)

During the time the claimant performed service under the contract, he was required to transport the mail between the mailing room and basement of the general post-office at the city of Boston, and the stopping place of the West End Street Railway Company, on Water street, in said city, from May 1, 1895, to February 1, 1896. The claimant protested against

the performance of this service to the postmaster at Boston, but no protest or objection was made to the Postmaster-General, nor to anyone connected with the Post-Office Department at Washington. If entitled to recover therefor, the reasonable value is $274.55. (Rec., p. 42.)

During the time the claimant performed service under the contract the postmaster at Boston directed him to carry the mails between the Back Bay post-office and the Brookline post-office, a distance of 2½ or 3 miles, the latter post-office being situated outside the city limits of Boston, and which service was not embraced within the terms of the contract. The claimant objected to the performance of this service to the postmaster at Boston, but did not make any protest to the Postmaster-General nor to any officer of the Post-Office Department, nor was the Postmaster-General or any officer of the Post-Office Department apprised of the fact of the performance of this service by the claimant until August 14, 1894. Upon being apprised of the performance by the claimant the Postmaster-General promptly ordered its discontinuance and entered into contract with another person for its performance, for which payment was made to such other person. If entitled to recover for this service, the reasonable value thereof is $462.50. (Rec., p. 42.)

On December 9, 1895, and during the term of the contract, the Postmaster-General ordered the claimant to discontinue the service being performed by him, and pursuant to such order the claimant was compelled to

so discontinue on January 31, 1896. The order of discontinuance was as follows:

> From January 31, 1896, discontinue service, allowing contractor one month's extra pay. (Rec., pp. 42, 43.)

This order of discontinuance was not made on account of any neglect or default on the part of the claimant in the performance of the contract, but was asserted by the Postmaster-General under the clause contained in the contract providing "that the Postmaster-General may discontinue the entire service whenever the public interest, in his judgment, shall require such discontinuance." (Rec., p. 43.) The service had been rightfully decreased, under the stipulations of the contract, until the services remaining to be performed were not reasonably worth the original contract rate, and to have continued its payment would have been contrary to public interests. The Postmaster-General's action was influenced solely because, in his judgment, the public interest required the discontinuance of claimant's services under the contracts in question. (Rec., p. 52.) The claimant was offered the privilege of continuing the service at a reduction from the contract rate, which he declined. (Rec., p. 43.) In order to have the service thus reorganized performed, the Postmaster-General ordered claimant to discontinue the service, as above stated, against the protest and objection of claimant, and thereafter relet the service so decreased to another for the remainder of said contract period, namely, from February 1, 1896,

to June 30, 1897, inclusive, at a compensation of $37,000 per annum, said route being designated in the new contract as No. 204002, and such service was thereafter performed by such other during the remainder of the contract term. (Rec., p. 43.)

If the claimant is entitled to recover damages as for a breach of contract because of its annulment during the term for which made, he should recover $14,757.81.

THE BROOKLYN CONTRACT.

On September 15, 1892, the Postmaster-General, acting therein on behalf of the United States, invited proposals also for transporting the mail on route No. 207001, being the "covered regulation wagon mail messenger, transfer, and mail station service," at the city of Brooklyn, N. Y. (Rec., p. 44.)

The advertisement contained the same instructions to bidders (Rec., pp. 14, 15, 16, 17, 18) which applied to the Boston advertisement, which instructions, therefore, included all the provisions hereinbefore set out as relating to the Boston contract, *supra*.

Pursuant to said advertisement and the matters therein contained, the claimant made and filed with the Department a proposal for the performance of the service for the period named therein, namely, from July 1, 1893, to June 30, 1897, inclusive, naming as compensation to be received the sum of $18,934 per annum. (Rec., p. 44.)

Claimant's proposal was duly accepted by the Department, and on December 21, 1892, a contract was entered into between him and the United States for

the performance of the service accordingly, and thereupon the claimant engaged in the carrying of the mails thereunder. (Rec., pp. 27, 28, 29, 30, 31, 44.)

The contract so entered into referred to the advertisement and provided that by such reference the advertisement was thereby made a part of itself; and specifically stated that the contractor had been accepted to perform the service advertised, "and all new or additional service of said kinds which may at any time during the term of this contract be required in said city." (Rec., p. 27.)

The second covenant (Rec., p. 28), the tenth covenant (Rec., p. 29), and the stipulation regarding the right of the Postmaster-General to discontinue the service "whenever the public interests, in his judgment, shall require such discontinuance" (Rec., pp. 29, 30), and that making the contract subject to the laws and acts of Congress relating to post-offices and post-roads (Rec., p. 30), are identical in every respect with the same covenants and stipulation in the Boston contract set forth *supra*.

During the claimant's term of service at Brooklyn, N. Y. (and from December 18, 1895), and in order to provide that city with improved mail facilities, the Post-Office Department established mail service on the Brooklyn Heights Railroad (railway routes Nos. 207805 and 207807), a street-car line, for the transportation in the cars of that company of the mails from the vicinity of the post-office to the vicinity of the postal stations E, W, and G, and the Long Island Railroad at

Long Island City (Manhattan avenue and Box street). (Rec., p. 44.)

The service thus established dispensed with the service theretofore required of claimant under his contract for the transportation of mails over the routes covered by said street-car line. In lieu of this service the claimant was required to perform service between the post-office and the mail route established on the street-car line and between said mail route and the mail stations. The same mails theretofore required under his contract to be transported over long distances were thereby required to be carried but very short distances. (Rec., p. 44.)

The service theretofore required of the contractor under his contract and the advertisement, of which he was relieved, and the service required of him in lieu thereof, is, in detail, as follows:

Claimant was required under the contract and advertisement to carry the mails between the general post-office and Station E, a distance of 5.38 miles, by 36 round trips per week. The service required of him in lieu thereof was to carry between Station E and the Brooklyn Heights Railroad (at Alabama avenue), a distance of 0.23 mile, by 119 round trips per week, from December 18, 1895. The miles of travel of which the claimant was thus relieved was 4,298.66. The miles of travel required in lieu thereof was 143.56; a reduction in the miles of travel which would otherwise have been required of 4,155.01. (Rec, pp. 44, 45 (*b*).) This is claim "(*b*)" of the petition.

In lieu of service theretofore required of claimant under the contract and advertisement, he was, from December 18, 1895, required to perform further service to Station E, such new service being from Manhattan Crossing to Station E, 0.38 mile, 18 round trips per week. Manhattan Crossing was a railroad station on a railroad route, No. 107124, and was in existence at the time the claimant made his contract. This service was provided for by paragraph 2 of the advertisement and provisions of the contract, section 10. (Rec., p. 45 (*a*).) This is claim "(*a*)" of the petition.

If claimant could recover for these services required above mentioned, the value of the same would be $142.01. (Rec., p. 47 (*a* and *b*).)

Claimant was required under the contract and advertisement to carry the mails from Station G to Station W, a distance of 1.65 miles, 50 trips per week, and from Station W to Station G, return, the same distance, 57 trips per week. The service required of him in lieu thereof was to carry the mails from Station G to the Brooklyn Heights Railroad (Manhattan and Greenpoint avenues), 0 06 mile, by 118 trips per week, and from the Brooklyn Heights Railroad to Station G, return, the same distance, by 119 trips per week, from December 18, 1895. The miles of travel of which the claimant was thus relieved was 1,855.92, and the miles of travel required in lieu thereof was 149.48, making a net reduction of miles of travel which would otherwise have been required of 1,706.44. (Rec., p. 45 (*c*).) This is claim "(*c*)" of the petition.

Claimant was required under the contract and advertisement to carry the mails between the general post-office and Station W, a distance of 2.57 miles, by 70 round trips per week. The service required of him in lieu thereof was to carry the mails between Station W and the Brooklyn Heights Railroad (at Bedford avenue and Broadway), a distance of 0.08 mile, by 232 trips per week, from December 18, 1895. The miles of travel of which the claimant was thus relieved was 3,782.14, and the miles of travel required in lieu thereof was 389.98, making a reduction in miles of travel which would otherwise have been required of 3,392.16. (Rec., p. 45 (*d*).) This is claim "(*d*)" of the petition.

If claimant could recover for this service, the value of the same would be $111.58. (Rec., p. 47 (*d*).)

Claimant was required under the contract and advertisement to carry the mails from the general post-office to Long Island Railroad at Long Island City, via stations S, W, and G, a distance of 8.10 miles by 6 trips per week; and from Long Island Railroad at Long Island City, via stations G and W, to the general post-office, a distance of 5.04 miles, by 12 trips per week. The service required of him in lieu thereof was to carry the mails between the Long Island Railroad at Long Island City and the Brooklyn Heights Railroad, a distance of 0.61 mile, by 36 round trips, from December 18, 1895. The miles of travel of which the claimant was thus relieved was 1,437.82, and the miles of travel required in lieu thereof was

461.76, making a reduction in miles of travel which would otherwise have been required, of 976.06. (Rec., p. 45 (*e*).) This is claim "(*e*)" of the petition.

If the claimant could recover for this service, the value of the same would be $60.96. (Rec., p. 47 (*e*).)

Further, during the claimant's term of contract at Brooklyn, the Department authorized and established regular railroad service on the Brooklyn Heights Railroad on route No. 107172, terminating in the city of Brooklyn. It became necessary in consequence of the establishment of this railroad route, to provide service between the general post-office and the terminus of such route at Fulton and Johnson streets, and the claimant was required to provide for the same. (Rec., pp. 45, 46.)

This service was, in detail, as follows:

Claimant was required to carry the mails from the general post-office to the Brooklyn Heights Railroad at Fulton and Johnson streets, a distance of 0.1 mile, by 81 trips per week, and from the Brooklyn Heights Railroad at Fulton and Johnson streets, to the general post-office, return, the same distance, by 57 trips per week, from May 8, 1895.

This service was properly required under paragraph 2 of the advertisement and the provisions of the contract, and the tenth section thereof. (Rec., p. 46 (*f* and *h*).) This is claim "(*f*)" and "(*h*)" of the petition.

Further, during the claimant's term of contract at Brooklyn, the Department authorized regular railroad service on the Brooklyn Heights railroad on route

No. 107143, terminating in the city of Brooklyn. It became necessary in consequence of the establishment of this railroad route to provide service between the general post-office and the terminus of said route at Fulton and Johnson streets, and the claimant was required to provide for the same. (Rec., p. 46.)

This service was, in detail, as follows:

Claimant was required to carry the mails between the general post-office and the Brooklyn Heights railroad, a distance of 0.1 mile, by 38 round trips, from January 7, 1895.

This service was properly required under paragraph 2 of the advertisement and provisions of the contract, and the tenth section thereof. (Rec., p. 46 (*g*).) This is claim (*g*) of the petition.

Further, during the claimant's term of contract at Brooklyn, the Department authorized regular railroad service on the Brooklyn, Bath and West End Railroad, on route No. 107076, terminating in the city of Brooklyn. This new railroad route superseded mail-messenger route 207066, which had been operated theretofore by the same railroad company, and which had terminated 3.66 miles from the general post-office, between which terminal and post-office the claimant had been required under the advertisement to perform service. The Department required the claimant to provide for the service between the general post-office and the new terminus, instead of the old terminus. The same mails were carried and to the same railroad, but to a new and nearer terminus. (Rec., p. 46.)

The service theretofore required of the claimant under his contract and the advertisement, of which he was thus relieved, and the service required of him in lieu thereof, is, in detail, as follows:

Claimant was required under the contract and advertisement to carry the mails between the general post-office and the Brooklyn, Bath and West End Railroad, a distance of 3.66 miles, by 18 round trips per week. The service required of him in lieu thereof was to carry the mails between the general post-office and the same railroad at the new terminus of the route, a distance of 0.01 mile, by same number of trips. The miles of travel of which the claimant was thus relieved was 11,506.01, and the miles of travel required in lieu thereof was 31.38, making a reduction in miles of travel which would otherwise have been required of 11,474.63. Even if it were not considered the same service, the requirement as to performance of which was more advantageous to claimant, it was, nevertheless, properly required under paragraph 2 of the advertisement and provisions of the contract, and the tenth section thereof. (Rec., pp. 46, 47 (*i*).) This is claim "(*i*)" of the petition.

If the claimant could recover for this service, the value of the same would be $840.66. (Rec., p. 47 (*i*).)

In every instance excepting the service between the post-office and the Brooklyn Heights Railroad on route 107172, and between the post-office and the Brooklyn Heights Railroad on route 107143, it was new service to new stations (or to a station in existence, as to route

107124). In the case of service between the post-office and the Brooklyn, Bath and West End Railroad on route 107076, it was service to a new route and new station, though the service was in fact the same service, but performed over a shorter distance. (Rec., p. 47.)

On January 21, 1896, and during the term of claimant's contract, the Postmaster-General ordered the claimant to discontinue the service so being performed by him, and pursuant to said order the claimant was compelled to so discontinue from February 29, 1896. The order of discontinuance was as follows:

> Discontinue service from February 29, 1896, and allow contractor one month's extra pay. (Rec., p. 47.)

This order of discontinuance was not made on account of any neglect or default on the part of the claimant in the performance of the contract, but was asserted by the Postmaster-General under the clause contained in the contract providing "that the Postmaster-General may discontinue the entire service whenever the public interest, in his judgment, shall require such discontinuance." (Rec., p. 47.) The service had been rightfully decreased, under the stipulations of the contract, until services remaining to be performed were not reasonably worth the original contract rate, and to have continued its payment would have been contrary to public interests. The Postmaster-General's action was influenced solely because, in his judgment, the public interest required the discontinuance of claimant's serv-

ices under the contract in question. (Rec., p. 52.) In order to have the service as thus reorganized performed, the Postmaster-General ordered claimant to discontinue the service as above stated, against his protest and objection, and thereafter relet the service so decreased to another for the remainder of the contract period, namely, from March 1, 1896, to June 30, 1897, inclusive, at a compensation of $9,720 per annum, said route being designated in the new contract as No. 207004, and such service was thereafter performed by such other during the remainder of the contract term. (Rec., p. 48.)

THE OMAHA CONTRACT.

On September 15, 1893, the Postmaster-General, acting therein on behalf of the United States, advertised for proposals for transporting the mails in various cities, and, among others, on route No. 257001, being the "covered regulation wagon mail messenger, transfer, and mail station service" at the city of Omaha, Nebr. (Rec., p. 48.)

This advertisement contained the same instructions to bidders (Rec., pp. 14, 15, 16, 17, 18) which applied to the Boston and Brooklyn advertisements, which instructions, therefore, included all the provisions hereinbefore set out as relating to the Boston contract, *supra.*

Pursuant to said advertisement and the matters therein contained, claimant, under the name of Luther Clay Slavens, jr., made and filed with the Department a proposal for the performance of the service for the period

named therein, namely, from July 1, 1894, to June 30, 1898, inclusive, naming as compensation to be received therefor the sum of $3,780 per annum. (Rec., p. 48.)

The proposal was duly accepted by the Department, and on December 21, 1893, a contract was entered into between him and the United States for the performance of the service accordingly, and thereupon the claimant engaged in the carrying of the mails thereunder. (Rec., pp. 35, 36, 37, 38, 39, 48.)

The contract so entered into referred to said advertisement, and provided that by such reference the advertisement was thereby made a part of itself, and specifically stated that the contractor had been accepted to perform the service advertised "and all new or additional service of said kinds which may at any time during the term of this contract be required in said city." (Rec., p. 35.)

The second covenant (Rec., p. 36) and the tenth covenant (Rec., p. 37) are identical in every respect with the same covenants in the Boston contract set forth, *supra*.

During the claimant's term of service at Omaha, Nebr., the Department authorized and established two new railroad mail routes in that city, operated by the Omaha Street Railway Company, one between the Union Depot and the Omaha post-office, Fourteenth and Dodge streets, and the other between Fourteenth and Dodge streets and South Omaha. One end of each of these routes terminated at Fourteenth and Dodge streets, which was a junction and transfer point, such

as is usual with street-car lines in cities for the accommodation of the public, and the other end of one of these routes terminated at the Union Depot. (Rec., pp. 48, 49.)

After the establishment of these railroad routes between the points a large amount of the service theretofore performed by the claimant in wagons between the points was thereafter performed by the street-car company over the railroad route. By reason of the establishment of these new railroad routes it became necessary to provide service between their termini at Fourteenth and Dodge streets and the post-office, between the two routes (transfer of mails) at that point, and between the terminus of one route and the Union Depot. Though not so ordered, this service was in part performed in lieu of such service between the general post-office and the Union Depot, of which the claimant had been relieved by reason of its performance by the street car company on the newly established railroad route. (Rec., p. 49.)

The amount of service of which the claimant was thus relieved was 176.6 miles of travel per week, while the amount which was required of him in lieu thereof was 41.06 miles of travel per week, making a reduction in the miles which would otherwise have been required of 132.54 per week. Though the subsequent advertisement of service included all that the claimant performed, and besides considerable other service which he did not perform (service which had been theretofore included under a mail-messenger route), yet

the claimant's own estimate of the value of the combined service was only $347 per annum more than he was being paid for the lesser service, and out of the lowest nine bidders seven of them estimated by their proposals the value of the combined service at less than the amount which claimant was being paid for the lesser service, the bid of the lowest bidder, to whom the service was subsequently awarded, being $1,130 less. (Rec., p. 49.)

The service thus established was a mere substitution of another manner of performing the same service contracted for and at an advantage to the claimant, and was otherwise properly required under paragraph 2 of the advertisement and provisions of the contract and the tenth section thereof. (Rec., p. 49.)

Claimant brought suit in the Court of Claims to recover the value for the new and additional service as hereinbefore set forth, alleging it to have been extra service not contemplated by the contracts, and to recover damages for the action of the Postmaster-General in discontinuing the service under his contracts. The court dismissed the petition upon the ground that the service to the point outside of Boston was performed without the knowledge or request of anyone having authority of the United States, and that the other service required of claimant was such new and additional service as was described and contemplated by the contracts, and that the contracts themselves gave the Postmaster-General the right to discontinue the service whenever the public interest, in his judgment, should

require such discontinuance, the claimant in such case to be allowed one month's extra pay as full indemnity; that the Postmaster-General rightly discontinued the service under claimant's contracts to subserve the public interest in taking care that no unreasonable compensation was paid for the service actually performed.

From this judgment the present appeal was taken.

ARGUMENT.

There are two questions involved in these three contracts: The first, the question whether the service required under the Boston, the Brooklyn, and the Omaha contracts, and for which claim is made, was new and additional or changed service of the kind named in the contract that the Postmaster-General might order without additional compensation (and in one instance where it was not such service, whether the defendants are responsible for the unauthorized acts of the postmaster in so ordering service without their knowledge or sanction); and the second, the question of the right of the Postmaster-General to discontinue the service of claimant under the Boston and Brooklyn contracts when he, the Postmaster-General, should, in his judgment, believe that the public interests require it. These may be best examined separately and in the order stated.

I.

NEW AND ADDITIONAL SERVICE PROVIDED FOR WITHOUT ADDITIONAL COMPENSATION.

AN EXCEPTION; BUT NO LIABILITY.

In the case of the Boston service there was one instance where the claimant was required by the postmaster to perform service between the Back Bay post-office and the Brookline post-office, the latter being situated outside the city limits of Boston, which was not warranted by the terms of the contract. For this, however, the United States are not liable, because the requirement was made by the postmaster and not by or with the authority, knowledge, or consent of any officer of the Post-Office Department. The claimant, though protesting to the postmaster at the time, did not protest to the Postmaster-General or to any officer of the Post-Office Department until August 14, 1894, whereupon the Postmaster-General promptly relieved the claimant of the service.

The question of law involved here is whether, under these circumstances, the postmaster at Boston is the authorized agent of the Postmaster-General to order the claimant to perform this service, and thus fix a liability upon the United States for its value. In the usual course of business of the Post-Office Department all orders requiring additional service are issued by the Postmaster-General and none are issued by the postmaster, who has no authority whatever in the premises.

The judgment on this point by the Court of Claims was for the United States, the court using this language:

> * * * The claimant insists upon compensation for carrying the mails between Back Bay and Brookline post-offices, the latter being outside the city of Boston; but as this service was performed without the knowledge or request of anyone having defendants' authority, this item, it is plain, can not be allowed, and it will be dismissed from the case without further notice. (*Whitsell* v. *United States*, 34 C. Cls. R., 5.) (Rec., p. 50.)

In the Whitsell case cited, where the contractor had performed extra service with the knowledge of the postmaster, but without the knowledge of any officer in the Post-Office Department, the court say:

> Notice to the postmaster that the service was being performed can not be imputed as notice to the Post-Office Department, for the reason that a postmaster has no power or authority to contract in respect of mail-messenger service, nor is he the agent of the Government to direct such service, as he is, within the limits of their duties, of letter carriers, who are his subordinates. (*Pitcher's case*, 1 C. Cls. R., 7, 11; *Ford's case*, 17 C. Cls. R., 60, 76; *Legare's case*, 24 C. Cls. R., 513, 516; 32 C. Cls. R., 417.)
>
> It follows that the Government can only be bound by the acts of its authorized agents, and, too, within the limits of their respective duties. (*Smith's case*, 32 C. Cls. R., 259, 309; *Roberts et al., Trustees*, v. *The United States*, 92 U. S. R., 41,

48.) Hence, it is the duty of persons dealing with public officers to inquire as to their power and authority to bind the Government. (*Hume* v. *United States*, 132 U. S. R., 406.)

REQUIRED SERVICE—PROVISIONS OF CONTRACT UNDER WHICH REQUIRED.

All the other instances under this heading of claim for new or additional service are those with respect to which the United States insist that the service was rightfully required under the provisions of the contract. What those provisions are has been fully set forth in the statement of facts as found by the Court of Claims, *supra*. They are essentially the same as to each contract, and can therefore be treated together. They are, in brief, as follows:

In issuing the advertisement inviting proposals for performance of the service the Postmaster-General warned prospective bidders that they would be required to perform, without additional compensation, *any and all new or additional service* that might be ordered at any time during the contract term, whether between post-offices and railroad stations, between post-offices and steamboat landings, between post-offices and mail stations, or between the several railroad stations, steamboat landings, and mail stations then established or that might thereafter be established, whether caused by the establishment of new or by change of site of existing post-offices, railroad stations, steamboat landings, or mail stations within said cities, or caused by the alteration of the routes made necessary for any

other reason. Bidders were admonished to inform themselves of the *probable increase, additional service, or changes likely to be rendered necessary* during the term.

The claimant submitted his proposals under these conditions and entered into contracts for the three cities with the United States, which expressly made the terms of the advertisement a part of such contracts and specifically provided for the performance of not only the service named in the advertisements, but of "*all new or additional service of said kind which may at any time during the term of this contract be required in said city*" in each case.

The claimant further contracted to take the mail from, and deliver it into, the post-offices, mail stations, and cars at such points, and at such hours, under the direction of the postmaster of these respective cities, approved by the Postmaster-General, as would secure dispatches and connections and facilitate distribution.

He further agreed by the express terms of his contract to perform all new and additional or changed covered regulation wagon mail messenger, transfer, and mail-station service that the Postmaster-General might order in these several cities during the terms of his contracts, without additional compensation, whether caused by change of location of any of the offices, stations, etc., named, or by the establishment of others than those then extsting, "*or rendered necessary, in the judgment of the Postmaster-General, for any cause.*"

PURPOSE AND REASONABLE CONSTRUCTION OF THESE PROVISIONS.

Upon the interpretation to be given those provisions of the contracts depends the question as to whether the claimant is entitled to additional compensation for the services required of him for which claim is made. The Court of Claims held that these provisions clearly covered the services which were required of the claimant and that therefore he has no just claim for additional compensation.

It is apparent that the purpose of these provisions was to provide a contract which should be sufficiently flexible to meet the conditions which arise in cities by reason of changes in the location or otherwise of existing post-offices, mail stations, railroad mail routes, railroad stations or depots, and wharves, or the establishment of new ones. This intention is evidenced not only in the terms of the contract which is the final agreement of the parties, but it may be clearly inferred from the advertisement inviting proposals for the service. Warning is repeatedly given that the contractor will be required to perform not only the service specified in the schedule of the advertisenent, but all new or additional service of the same kind, whether between any of the points named or between others which may be established in the future. Not only is this comprehensive language repeatedly used, but it is finally followed in the contract by the provision that the contractor shall perform such additional service without

additional compensation if "rendered necessary, in the judgment of the Postmaster-General, for any cause."

The rapid growth of cities, with the consequent changes in postal and transportation needs and facilities, makes it necessary, in entering into a four-year contract for wagon service, to provide for all changes in these conditions in general and broad terms such as here used. These provisions are apparently designed to meet those emergencies. They can have no other meaning.

The only limitation or restriction imposed upon the right to include such new service in the requirements of the contract is that it shall be of the kinds mentioned in the advertisement and contract.

The question as to what is "new or additional" service of the "kind" named in such advertisement and contract has been determined by the courts to some extent. In the *Wolverton case* (27 C. Cls. R., 292), it was held that the word "additional" would not transfer to the wagon service a service already in existence as a separate route and performed by other means at the time of the advertisement. Also, in the *Wolverton case* (34 C. Cls. R., 247), "mail messenger service" was held not to include the transportation of gold; and that "mail stations" did not include street boxes and substations differing in no substantial respect from street boxes, a "substation" being distinct from a "branch post-office" or "mail station" under the law governing the Post-Office Department. In the *Union Transfer Co. case* (36 C. Cls. R., 216), it was held that a new system of

"receiving stations" (substantially the same as the "substations" in the *Wolverton case*) was not included, but that new branch post-offices or full stations were.

In none of these cases has the question arisen upon a like state of fact as exists in this one, and there is no analogy between the facts of those cases, with respect to which the courts have held the service to be outside the terms of the contract, and the facts of this case. There is, however, a clear analogy between the facts of this case and those which have been held to be within the meaning of the provisions, as, for instance, additional stations in the *Union Transfer Company's case, supra.*

Counsel for claimant has made special effort to show that the judgment of the Court of Claims in this case is inconsistent with prior and subsequent decisions, and quotes from such decisions in his argument. It has been stated above that the question presented here has never been specifically passed upon in any other case, and that the argument to be drawn from the language in other cases is clearly in favor of the United States.

An examination of the cases thus quoted from will show that the service held to be not of the "kind" specified in the contracts there under consideration was in no respect like the service required of complainant in the case at bar.

For instance, in the Otis case (120 U. S., 115) there were two contracts, one for "mail-messenger service," "for carrying the mails between the New York City post-office and the railroad stations and steamboat

landings, and between the several stations where transfer service is required;" the other for "mail-station service" "between New York City post-office and branch offices." Compensation for increased service was excluded in the former contract, but included in the latter. Service was subsequently ordered between Station E, 465 Eighth avenue, and Hudson River Railroad depot, and the question was whether it should be paid for as if ordered under the latter contract or whether it was service such as was described under the former contract. It was held to be "mail-station service," and, therefore, that it was not such service as was described under the former contract where no mention is made of mail stations. Service was also ordered between New York City post-office and the Pennsylvania Railroad depot in Jersey City, N. J., and the question in reference thereto was whether it was service within the description of the former contract. It was held that the contract covered only such additional duties without compensation as related to service in the *city of New York.*

In the Knox case (30 C. Cls. R., 59) the question was whether a mail-bag repair shop was a mail station such as the advertisement and contract described and contemplated. It was held that it was not.

In the Wolverton case (34 Id., 247) it was held that the transportation of gold did not come under the designation of "mail-messenger service" to transport the *mail;* that mail service from "mail stations" (which term has a defined meaning under the statutes and the

practice of the Department) did not mean service from substations or street letter boxes; and that a contract to carry mail from New York and the railroad station in Jersey City did not cover mail for Jersey City post-office.

In the Union Transfer case (36 Id., 216) it was held *inter alia* that service to mail stations did not cover service to reciving stations.

In the Utah, Nevada and California Stage Co. case (not yet reported) the court held that the establishment of the Industrial Building Branch, about 3½ miles north of the New York City post-office, and the removal thereto of a considerable part of the duties which had theretofore been performed at the city post-office, was the introduction of a new condition in the city postal service which had never been there before; that is, the establishment of a new post-office system, and the claimant was allowed to recover for the services performed thereto. This case, however, is now pending on appeal to this court.

These are the particular features of service which were held to be not of the "kind" described under the contracts there under consideration, and it will be readily seen that they are not at all analagous to the service required of complainant in the case at bar. He was not required to carry anything but mail, and such as he would have been obliged to otherwise carry between points named in his contract, and to carry it, not to points wholly different in "kind" from those named in the advertisement and contract, but to such

as were of the same "kind" in every substantial and actual feature. Nor can it be said that the authorization of mail service upon street railways as regular railroad routes or otherwise was the introduction into the postal service of a new condition or a new system, it in fact being only an extension of a long-existing and well-understood method of transporting the mails between post-offices and postal and railroad stations.

SERVICE REQUIRED WAS OF SAME "KIND" AS THAT SPECIFIED IN CONTRACT.

THE BOSTON SERVICE.

The following examination of the facts will show the required service to have been clearly of the kind contracted for.

The schedule of service detailed in the advertisement for the Boston service shows service to be performed between the general post-office and various railroads and railroad stations. (Rec., p. 11.) The West End Street Railway was not among those named, however, and it is to this railway, at its stopping place on Water street, that the claimant was required to perform service, and for which he asks compensation.

Service had been established upon this street railway (which action resulted in such a great reduction of the claimant's service as originally specified in the advertisement that the entire contract was ultimately discontinued), and it became necessary to have the mails carried from the post-office to this new route, a very short distance and entailing a very small amount of service compared with the amount dispensed with.

The service was for the carrying of the mails (the same which would have been carried elsewhere by the contractor) between a post-office and a railroad route, and was therefore clearly "messenger service."

There was no practical distinction between this new route and the ones originally named in the advertisement. They were all routes upon which the mails were carried, either in or terminating at Boston, and between which and the post-office it was necessary to have this or an exactly similar wagon service to connect. There is no distinction whatever made in the contract or advertisement between steam-railroad routes and street-railway routes. In the contemplation of the service, and in reason, one kind stands in the same relation to the wagon service as the other. The mails were carried upon the one as upon the other, and it was necessary in both cases to provide wagon service to and from their stations. Nor is it material whether those stations be buildings of a steam road or stopping places on the line of a street railway. The only meaning or purpose of a "station," so far as the mail service is concerned, is a point where mails may be received or dispatched. This point designated on the street-car line answered that purpose. It bore the same relation to the street-railway mail route that the building or depot did to the steam-railroad mail route. In both cases they are, as far as the mail service is concerned, merely points at which mail may be delivered to or received from the cars of the route.

It is submitted, therefore, that in every essential feature, the service required in Boston was of the same "kind" as that specified in the advertisement and contract.

In connection with the claim for compensation for this particular service, it is further submitted that, even if the service did not clearly fall within the provisions relied upon, the claimant can not recover, because he performed it without protest or objection to the Postmaster-General or any officer of the Post-Office Department. It is true that he protested to the postmaster at Boston, which protest was not brought to the knowledge of the Department, but this was of no avail, because the postmaster is not the agent of the United States for this purpose. (*Whitsell* v. *The United States*, 34 C. Cls. R., 10, and cases cited.)

THE BROOKLYN SERVICE.

With respect to the Brooklyn contract the case is essentially similar. The schedule of service detailed in the advertisement shows service to be performed between the general post-office, railroad stations, and mail stations. (Rec., pp. 25, 26.) The Brooklyn Heights railroad was not named among them, however, and it is to this railroad (and to one as well, that is named) that claimant was required to perform additional service and for which he asks additional pay. During the term of claimant's service, and for the purpose of providing the city of Brooklyn with improved mail facilities, the Postmaster-General established new

railway mail routes on this street railroad which superseded a large part of the claimant's wagon service as contracted for. In lieu of this service so dispensed with the Postmaster-General required this service to the new routes—a vastly reduced service, as shown in the statement of facts, *supra*. Was this of the "kind" contracted for?

Clearly, it was "mail-messenger * * * and mail-station" service, for identically the same mails were carried between the post-office and the new railroad routes and between the mail stations and the new railroad routes as would otherwise have been carried by the claimant between the post-office and the mail stations without the intervention of the street-railroad mail routes. It was the identical mail, of the same origin and destination.

The same reasons which are advanced with reference to the Boston service to show that there is no practical distinction between the character of the route and its station to which service was required and the routes and stations specified in the advertisement are entirely applicable to the Brooklyn service, and are controlling to the same extent.

It is submitted, therefore, that in every essential feature the service required in Brooklyn was of the same "kind" as that specified in the advertisement and contract.

Not only was all the Brooklyn service the same kind as that specified in the contract, and fully covered by the special provisions herein relied upon, but several

of the requirements were for service to regular railroad routes terminating in Brooklyn (not mere local city street-car mail service), in all respects similar to the railroad routes named in the advertisement, one of which operating companies (the Brooklyn, Bath & West End R. R.) was also named therein. These were services to routes No. 107172, No. 107143, and No. 107076; one requirement also was for service to a station on No. 107124 in existence at the time of the advertisement, and as to these no doubt can exist.

THE OMAHA SERVICE.

With respect to the Omaha contract the case is essentially similar. The schedule of service detailed in the advertisement shows service to be performed between the general post-office, railroads, and Union depot and Webster street depot, and transfers. (Rec., pp. 33, 34.) The Omaha Street Railway was not named among them, however, and it was to this railway that claimant was required to perform additional service for which he asks additional pay. During the term of claimant's service, and for the purpose of providing improved service in Omaha, two new railroad routes were established upon this railway, which superseded a large part of the service theretofore performed in wagons by the claimant under his contract. In lieu of this service so dispensed with the claimant was required to provide service to these new routes—a much reduced service.

Clearly, it was "mail messenger" service, for identically the same mails were carried between the general post-office and the new railroad routes, transferred between them, and between the routes and the Union depot, as would otherwise have been carried by the claimant between the post-office and Union depot by wagons and without the intervention of the street railway mail routes. It was the identical mail of the same origin and destination.

The same reasons which are advanced with reference to the Boston service to show that there is no practical distinction between the character of the route and its station to which service was required, and the routes and stations specified in the advertisement are entirely applicable to the Omaha service and are controlling to the same extent.

It is submitted, therefore, that in every essential feature, the service required in Omaha was of the same "kind" as that specified in the advertisement and contract.

THE POSTMASTER-GENERAL TO DETERMINE THE NECESSITY FOR SUCH SERVICE.

The contract provided that the contractor should perform all such new or additional service which might be "rendered necessary, in the judgment of the Postmaster-General, for any cause"

Upon this point Mr. Justice Wright said, in rendering the opinion of the Court of Claims in this case:

> The service so described was such as might be rendered necessary for any cause, in the judg-

ment of the Postmaster-General. It must, of course, be connected with, or an incident to, the covered wagon mail messenger, transfer, and mail station service, for such only is the subject-matter of the contracts. It is easily seen that the extra service claimed for readily falls within the class or description of service specified in the contracts, or in part of, or incident to such service, rendered necessary for some sufficient cause. The discretion or judgment of the Postmaster-General, given by the contract, to determine the necessity of such service, ought not to be questioned, unless to prevent unwarranted or unjust interruptions in the contract rights vested in the claimant. It will not be presumed that officer required the performance of services not demanded by the exigencies of the business. Nothing appearing to the contrary, it will be assumed that the service required was necessary to the proper administration of the powers conferred by law upon the head of the Department, which was clearly reserved by the stipulations contained in the contracts. (Rec., pp. 50–51.)

If these provisions relied upon did not warrant the requirements made of the claimant, it is difficult to conceive what purpose they could serve in the contract. If they did not provide for just such a natural change in the postal and transportation necessities, the Postmaster-General was powerless to meet such without duplication of service, with unreasonable and unnecessary duplication of cost.

THE CLAIMANT WAS NOT DAMAGED.

The facts as found by the Court of Claims, and as hereinbefore recited in the statement, show that the service for which the claimant sues was required of him in lieu of service due from him under his contract, and of which he was relieved thereby, and that the amount of such service of which he was so relieved was greatly in excess of that required of him. A summary showing the proportion of this excess is as follows:

In Boston the service was so greatly decreased that the Postmaster-General afterwards determined that the public interest required him to discontinue the service and relet the residue under a new contract. Under the claimant's contract there was no deduction from his pay on account of the decrease in service.

In Brooklyn the total number of miles of service of which he was relieved was 22,880.55, and the total number of miles of service required in lieu thereof as far as ascertained was 1,176.16, leaving a net total of 21,704.39 miles of travel of which the claimant was thereby relieved from performing.

Under the terms of his contract there could be no decrease in the claimant's pay therefor. The decrease in the service was so great that the Postmaster-General afterwards determined that the public interest required him to discontinue the service and relet the residue under a new contract.

In Omaha the number of miles of service per week of which he was relieved was 176.6, and in lieu thereof he was required to perform only 41.06, making a reduction of 132.54 miles per week.

The service thus established was a mere substitution of another manner of performing the same service contracted for and at an advantage to the claimant, as was specifically said by the Court of Claims regarding the Omaha service.

This being true there is no ground whatever upon which a recovery can be reasonably and equitably urged. It is believed that the Court of Claims properly stated the law on this point in the *Union Transfer Company's case* (**36** C. Cls. R., 229), as follows:

> If the claimant performed in substance the same service which he was required to perform under the contract with less trouble and expense to himself, upon a *quantum meruit* claim, he would not be entitled to recover. If by consent of the other contracting party a party is relieved from a portion of the contract and performs an act not coming directly within the contract at less expense and trouble, he can not charge the other party with additional pay if by such arrangement he was exonerated from an equivalent service under the agreement.

II.

THE DISCONTINUANCE OF THE SERVICE UNDER THE CONTRACTS.

CLAIM FOR DAMAGES.

The remaining question involved arises upon the claim for damages as for an alleged breach of contract on the part of defendants in discontinuing the service in Boston and Brooklyn.

The facts as to the action of the Postmaster-General in this regard are fully set forth in the statement, *supra*.

In the proper exercise of discretion reposed in him the Postmaster-General had established improved mail service for the cities of Boston and Brooklyn by the authorization of mail service upon certain street railroads during the term of claimant's wagon contracts. The placing of service upon these new routes relieved claimant of the performance of a large amount of wagon service called for under his contracts. Such service provided for in cities is subject to constant change as to the amount of service required, the weight of mails carried, and the increase or decrease in mileage to be performed which may be required of the contractor thereunder; consequently it has long been customary to provide in such contracts that these changes in requirements shall be without change of pay—so long as the service is allowed to continue—and the claimant's contracts provided, therefore, that there should be no diminution of compensation for partial discontinuance of service; consequently if these contracts were to be continued the United States would continue to pay claimant for the large amount of service which he was not performing and for which they were paying others. But while it is true that these contracts provided in this manner for such mutations in the service, which provision would undoubtedly govern so long as the contracts were allowed to remain in force, yet there was another provision in the same clause which gave the Postmaster-General the

right to discontinue the whole service whenever the public interest, in his judgment, should require it.

Believing that the public interest demanded such discontinuance, the Postmaster-General did so discontinue the service under the claimant's contracts in both cities, allowing him one month's extra pay in each case, in accordance with the provisions of the contracts, he having first given the claimant an opportunity to continue the service in Boston at a reduced price, which the claimant refused to do.

It is contended on the part of the claimant that this was a breach of the contract for the reason that the United States were obliged, under the terms of the contract, to continue it without diminution of pay, notwithstanding the decrease in the service, and that the Postmaster-General had no power to discontinue the remaining service under the claimant's contract, but only to discontinue the whole mail service.

On behalf of the United States it is insisted that the acts of the Postmaster-General were in all respects in accordance with the power reserved to him in the contract itself.

Reference here is specifically made to the brief for the United States in the case of *Wesley E. Travis, appellant*, v. *The United States*, No. 84, October term, 1904 (the question there involved being identical with this one question here), in support of the contention of the United States and the judgment of the Court of Claims, and only brief mention will be made here of the principal grounds upon which that argument is based.

THE RIGHT OF THE POSTMASTER-GENERAL TO DISCONTINUE THE SERVICE.

1. The right to discontinue the service is provided for by the Postal Laws and Regulations, section 817, edition 1887 (in force at the time of the execution of the contracts).

This regulation, made in accordance with Revised Statutes, section 161, conferring upon the Postmaster-General the right to make regulations not inconsistent with law, is thus given the full force and effect of a statutory enactment.

The contracts being made for the transportation of the mails were, by necessary implication, subject to this regulation in so far as the contract provisions themselves did not supersede it, and to a like extent they were made subject to the regulation by a specific provision of the contracts.

2. Although it is insisted that the provisions of this regulation fully authorized the Postmaster-General to discontinue the service under claimant's contracts, it is not relied upon wholly, because it is quite unnecessary to seek any other authority for that right than that which is found in the express terms of the contracts themselves.

The advertisement provides as follows:

> There will be no diminution of compensation for partial discontinuance of service, or increase of compensation for new, additional, or changed service that may be ordered during the contract term; but the Postmaster-General may discon-

> tinue the entire service on any route whenever the public interests, in his judgment, shall require such discontinuance, he allowing as full indemnity to the contractor one month's extra pay.

The contract not only makes this a part of itself, but by further express stipulation provides as follows:

> It is hereby stipulated and agreed by the said contractor and his sureties that the Postmaster-General may change the schedule and termini of the route, vary the route, increase, decrease, or extend the service thereon, without change of pay, and that the Postmaster-General may discontinue the entire service whenever the public interest, in his judgment, shall require such discontinuance; but for a total discontinuance of service the contractor shall be allowed one month's extra pay as full indemnity.

There is no uncertainty in these provisions as to the authority intended to be conferred upon the Postmaster-General. There are two subject-matters contained therein, each of which may be entirely distinct from and independent of the other. The first is that for an increase or decrease in service there will be no change in pay. The second is that the Postmaster-General may discontinue the entire service when, in his judgment, the public interests demand it. These are independent propositions. If the service be increased or decreased and the contract be allowed to continue in force, the contractor's pay shall not be increased or diminished. If, however, the Postmaster-General believes that the public interests require the

discontinuance of the service under the contract, he is given full and unlimited power so to discontinue it whenever, in his judgment, it is so demanded, and such decrease may become the sufficient reason, as well as any other, therefor.

3. The right to discontinue mail service under a regulation *similar* to the one above quoted has been determined by this court. (*Garfielde* v. *The United States*, 93 U. S., 242; *Chicago and Northwestern Rwy. Co.* v. *The United States*, 104 U. S., 680.)

The practice to so discontinue it has been officially advised by the Attorney-General under practically identical conditions, and must be presumed to have become an executive construction by the Postmaster-General. (19 Op. A. G., 147, 148.)

THE GROUNDS ON WHICH THE DISCRETION WAS EXERCISED, AND THE FACTS WHICH CONSTITUTED THEM.

The grounds upon which this discretion could be exercised are as follows:

1. Section 817, Postal Laws and Regulations, 1887, *supra*, provides for such discontinuance being made, (*a*) "In order to supply on the route superior service;" (*b*) "Or whenever the public interests, in his judgment, shall require such discontinuance or curtailment for any other cause."

2. The instructions to bidders, set forth in the advertisement and made a part of the contracts, provide that the Postmaster-General may discontinue the service "whenever the public interests, in his judgment,

shall require such discontinuance." The contracts specifically provide, further, that he may discontinue the service "whenever the public interests, in his judgment, require such discontinuance."

The claimant's services required under the original schedule of the advertisement had been greatly decreased by reason of the inauguration of new and improved service and diversion thereto of mails which were to have been carried by the claimant under his contracts.

THE DISCONTINUANCE.

Believing that the conditions provided for in the contracts had arisen, the Postmaster-General discontinued the remaining service under the claimant's contracts in both cities; but it is claimed by counsel for claimant that he was not authorized by the provision in the contract to discontinue the *service which then remained* to be performed, but that he was only authorized to discontinue the *entire service*.

The fallacy of this proposition has been considered at length in the brief in the Travis case, hereinbefore referred to.

III.

From the foregoing it clearly appears that the service performed to the point outside of Boston was without the knowledge or request of anyone having authority from the United States, for which, therefore, they are not liable, and that the other service required of the complainant was such new and additional service as

was provided for and contemplated by his contracts, and that the action of the Postmaster-General in discontinuing the service under claimant's contracts was in accordance with the provisions contained therein and fully warranted, and hence the judgment of the Court of Claims was right and just.

LOUIS A. PRADT,
Assistant Attorney-General.

JOSEPH STEWART.

O

Supreme Court of the United States.

No. 228 ~~and 84~~.—October Term, 1904.

Luther Clay Slavens, Appellant,
vs.
The United States.
} Appeal from the Court of Claims.

[January 9, 1905.]

The appellant filed his petition in the Court of Claims to recover for the alleged wrongful termination of certain mail contracts in the cities of Boston, Brooklyn and Omaha; and, also, for extra services performed in connection therewith. The Court of Claims, in disposing of the case, made separate findings of fact and conclusions of law. The findings of fact may be abridged for the purpose of this case, reference being made for fuller details to the findings in the Court of Claims. (38 Ct. Clms. 574.) In pursuance of an advertisement for proposals for transporting the mails—"covered regulation wagon, mail, messenger and mail station service"—the appellant entered into contracts for four years each for the cities of Boston and Brooklyn, and two years for the city of Omaha. The Boston and Brooklyn contracts began on July 1, 1893, and the Omaha contract on July 1, 1894. Compensation for the Boston contract was at the rate of $49,516 per annum; for the Brooklyn contract, $18,934 per annum, and for the Omaha contract at $3,780 per annum. During the terms of the Boston and Brooklyn contracts the Postmaster General determined to carry certain of the mails within the district contracted for on electric street railway lines. In both cases the appellant was offered the privilege of continuing the contract for the reduced service, but refused to do so in each case. The Postmaster General terminated the Boston and Brooklyn contracts, above referred to, the former on February 1, 1896, the latter on March 1, 1896, acting, as he avers, under the authority vested in him by law and the contract between the parties, but not because of any negligence or default on the part of the contractor. He afterwards relet the same service, as thus reduced, to another contractor, for the remaining period of the contract of the seventeen months of the Boston contract, at the compensation of $37,000 per annum. The difference between the contract price and the amount it would cost the appellant to furnish the service in Boston during said seventeen months would be $18,884.14. The service of the Brooklyn contract for the remaining period of sixteen months

was let to another contractor at a compensation of $9,720 per annum. The court did not find the amount of the loss to the appellant by reason of the termination of this contract The contracts contained certain stipulations, as set forth in the opinion.

The contracts covered certain specified stations, landings and mail stations from which the contractor was required to carry the mail, and during the terms of such contracts he was required to perform certain services, which he alleges to be extra services, and for which he was entitled to extra compensation—in the Boston contract, carrying the mails from the general post office in the city of Boston to the stopping places of the street car lines of the railway company from May 1, 1895, until February 1, 1896. Also, carrying the mails between the Back Bay post office and the Brookline office, a distance of from two and a half to three miles, which services were not included in the terms of the contract, but which he was required to perform by the postmaster of the city of Boston, against his protest. The contractor did not protest to the Postmaster General or any officer of the Post Office Department until August 14, 1899. Whereupon the Postmaster General dispensed with the service by the appellant, and entered into a contract with another contractor to perform the service.

Under the Brooklyn contract, which contained specifications as to the places between which the mail had to be carried during the term of the contract, the contractor was required to perform service between the Brooklyn post office and the mail routes established on the street car lines, and between the motor routes and the mail stations. Under the Omaha contract appellant was required, in addition to the places specifically named in the contract, to carry the mail to and from street cars of the Omaha Street Railway at its crossings. It also appears that under the three contracts the new service required, in lieu of the service specified in the contract, was much less in mileage required than was the service stipulated by the original contract. The Court of Claims dismissed the petition, (38 Ct. Clms. 574,) and the claimant appeals to this court.

Mr. Justice DAY delivered the opinion of the Court.

From the foregoing statement of facts it is evident that the case resolves itself into three propositions: (1) Can the appellant recover for the alleged wrongful termination of his contracts by the Postmaster General? (2) Under the contracts were the services performed in carrying mails from the street cars, at the places designated, extra services for which compensation outside of the contract should be awarded? (3) Under the Boston contract did the service required in carrying the mails to and from Brookline constitute extra service, for which compensation should be awarded?

To determine the first proposition it is essential to have in mind certain provisions of the statute, the preliminary notice to bidders, and, most important of all, the terms of the contract itself. In the notice to bidders it is said:

"There will be no diminution of compensation for partial discontinuance of service or increase of compensation for new, additional or changed service that may be ordered during the contract term; but the Postmaster General may discontinue the entire service on any route whenever the public interest, in his judgment, shall require such discontinuance, he allowing, as full indemnity to the contractor, one month's extra pay."

In the contract it is stipulated:

"It is hereby stipulated and agreed by the said contractor and his sureties that the Postmaster General may change the schedule and termini of the route, vary the routes, increase, decrease, or extend the service thereon, without change of pay; and that the Postmaster General may discontinue the entire service whenever the public interest, in his judgment, shall require such discontinuance; but for a total discontinuance of service the contractor shall be allowed one month's extra pay as full indemnity."

Section 817, Revised Statutes, Postal Laws and Regulations, 1887, provides:

"The Postmaster General may discontinue or curtail the service on any route, in whole or in part, in order to place on the route superior service, or whenever the public interests, in his judgment, shall require such discontinuance or curtailment for any other cause, he allowing as full indemnity to the contractor one month's extra pay on the amount or service dispensed with, and a *pro rata* compensation for the amount of service retained and continued."

Under the power supposed to be conferred upon him by the terms of the contract, made in pursuance of the preliminary advertisement and the authority vested in him by the Postal Laws and Regulations, above cited, the Postmaster General, having decreased the service under the contract, by reason of the introduction of the method of carrying the mails on the street railways, until the service required originally would be much more than paid for by the compensation agreed upon, discontinued the original service, and, the contractor declining to perform the work remaining at the lower compensation, put an end to the contract by an order of discontinuance, allowing the contractor one month's extra pay as full indemnity. It is contended by the appellant that this contract, properly construed, while it permits the Postmaster General to make changes in the schedule and termini of the route, to reduce the same, to increase, decrease or extend the service, without change of pay, does not confer the right to cancel the contract except upon abandoning the entire service, which may be done with the allowance of one month's extra pay to the contractor. But, it is insisted, so long as any part of the service remains to be performed, it is

not within the power of the Postmaster General to put an end to the service of the contractor and relet a part of it to another, substituting a different character of service for a part of the field theretofore covered by the contract. In other words, it is contended that the total discontinuance of service, which only can terminate the contract, must not leave any service to be performed in the district covered.

We cannot accede to this narrow construction of the powers given the Postmaster General by the terms of this contract. He is given general power to increase, decrease or extend the service contracted for, without change of pay. Furthermore, whenever the public interests in his judgment require it, he may discontinue the entire service. We think the advertisement and the regulations under which this contact was made and the contract as entered into were intended to permit the Postmaster General, when in his judgment the public interest require it, to terminate the contract, and if a service of a different character has become necessary in his opinion, to put an end to the former service upon the stipulated indemnity of one month's extra pay being given to the contractor. It is not reasonable to hold that the power given to the Postmaster General for the public interest can only be exercised when the mail service in the district is to be entirely abandoned. In the present case the contract was for mail service in three cities of importance, two of them among the large cities of the country, and all of them thriving and growing communities. It is hardly possible that the parties, in making this contract, could have had in view a time when the mail service would be dispensed with. On the other hand, the condition which the contract contemplated, and which in fact arose, made it desirable to extend to this district the use of street railways to carry the mails, with which to improve the facilities for mail delivery.

The authority given to the Postmaster General is broad and comprehensive, requiring him to exercise his judgment to end the service, and thereby terminate the contract, whenever the public interest shall demand such a change. In that event the contractor takes the risk that the exercise of this authority might leave him only the indemnity stipulated for—one month's extra pay. We are not called upon to say in this case that the Postmaster General, merely for the purpose of reletting the contract at a lower rate, may advertise and relet precisely the same service for the purpose of making a more favorable contract for the Government, no change having arisen in the situation except the desire for a better bargain. And it may readily be conceived that in some instances there may be such a diminution of the service contracted for in the district, by reason of the substitution of new and improved methods, as will render the compensation agreed upon altogether disproportionate to the services left to be rendered, and thereby invoking the authority of the Postmaster Gen-

eral to exercise the power reserved to him to terminate the contract. In the present case the findings of fact do not disclose a case of the arbitrary exercise of power. A new means of service within the district by means of the street railway was deemed by the Postmaster General to be required in the public interest. This necessitated the cutting down of the former service to make way for the new, and the Postmaster General exercised the power given him under the contract, and put an end to the service and the contract. If the contention of the appellant is to be sustained, while in the present case the street railway service was not a large proportion of the total service required, the same argument, carried to its legitimate conclusion, would prevent the Postmaster General from taking advantage of this stipulation, although it was manifest that a large proportion, maybe practically all, of the service could be better rendered to the public by substituting the new method, leaving only a small part of the old service to be rendered. In this contingency, as construed by the appellant, the contract price must still be paid, notwithstanding the changed conditions. These contracts were made for a term of years; two for four years and one for two years. It is insisted that the construction contended for by the Government practically puts the contractor into the power of the Postmaster General, and makes the stipulation, in substance, an agreement upon his part to do whatever that officer may require. The obvious answer to this contention is that the contractor is not obliged to carry on the contract when the Postmaster General elects to cancel it. Such action puts an end to the obligations of the contractor as well as the Government. Under the postal regulations, it appears that the contractor is given the opportunity to perform the reduced service at a lower rate. This he was not obliged to do, and, in the present case, declined to undertake. Our conclusion is that, acting in good faith, of which there is every presumption in favor of the conduct of so important a department of the Government, the Postmaster General may, as was done in this case, discontinue the service, and thereby put an end to the contract when the public interest, of which he is the sole judge, authorizes such action.

This view of the contract renders it unnecessary to consider at length the provisions of section 817 of the Postal Laws and Regulations, above quoted. It is urged that this section applies more particularly to star route and steamboat service, but the provisions of the law are broad and comprehensive, and not limited by the terms of the act to such specific service, but the power is given the Postmaster General whenever, in his judgment, the public interest shall require, to discontinue or curtail the same, giving the contractor as indemity one month's extra pay. Speaking of the action, authorized under section 263 of the former rules and regulations, this court in *Garfield* v. *United States*, (93 U. S. 242–46.) said:

"There was reserved to the Postmaster General the power to annul the contract when his judgment advised that it should be done. and the compensation to the contractor was specified. An indemnity agreed upon as the amount to be paid for cancelling a contract, must we think, afford the measure of damages for illegally refusing to award it."

And upon similar contract stipulations this court in *Chicago &c. Railway Co.* v. *United States,* (104 U. S. 680, 684.) said:

"It is true that under this reservation the Postmaster General would be authorized to discontinue the entire service contemplated by the contract, and the practical effect of that would be to terminate the contract itself on making the indemnity specified."

As to the other claim for extra services: In the stipulation of the contracts, it appears that the contractor was required to perform all new or additional or changed covered wagon mail station service that the Postmaster General should order, without additional compensation, whether caused by change of location of post office, stations or landings, or by the establishment of others than those existing at the time of the contract, or rendered necessary in the judgment of the Postmaster General from any cause, and that officer has the right to change the schedule, vary the routes, increase, decrease or extend the service without change of pay. It is insisted that these stipulations, properly construed, permit the Postmaster General to require only additional service of the same kind as that stipulated for, and that the carrying of the mails from street cars, where the same might be ordered to be met at crossings, was a new and different kind of service, and was not a change caused by a different location of a post office, station or landing within the meaning of the contract. But we think this is too narrow a construction of the terms of the agreement. Strictly speaking, the carrying of the mails from the street cars at the crossings is not taking them from the stations, but it practically amounts to the same thing. It imposes no additional burden upon the contractor; indeed, the findings of fact show that it greatly decreased his burden by lessening the number of miles of carrying required. We think this change of service was fairly within the power reserved to the Postmaster General, and the right given to him to designate such changes in the service as the public interest might require in the performance of this contract. It is true that if these services were not within the terms of the contract, and if they were of a different character, the fact that they greatly decreased the burden of the contractor might not require a disallowance of the claim for extra services. But we think the services were within the contract, fairly construed, and do not entitle the contractor to extra compensation.

In reference to the services rendered in Boston, required by the postmaster, between Back Bay station, in Boston, and the Brookline post office outside the limits of the city of Boston and not within the terms of the

contract, it does not appear that the requirement of such service was made, except by the postmaster of the city of Boston, who had no authority, so far as we can discover, to require such service. When the claimant protested to the Postmaster General he was promptly relieved from the service, and another contract was made for the performance of the same.

It is said that this claim is in all respects like the one sustained by this court in *United States* v. *Otis*, (120 U. S. 115,) where the contractor was allowed extra compensation for carrying the mails across the Hudson River from the Pennsylvania Railway depot at the foot of Cortlandt street, New York, to the depot of the same line in Jersey City, N. J., when the contract required him to carry the mails only to and from the depots in New York. In the opinion in that case Mr. Justice Blatchford said: "The United States directed the performance of this service." Presumably this was done by some one having the authority of the United States. In this case the Court of Claims has held, as we think rightly, that the postmaster, having no power or authority to contract in respect to the mail messenger service, was not the agent of the Government for such service, and could not bind the Government by his knowledge or acts in respect thereto. (*Roberts* v. *United States*, 92 U. S. 41, 48; *Hume* v. *United States*, 134 U. S. 406; *Whitsell* v. *United States*, 34 Ct. Clms. 5.) As the additional service in this case was not required by the authorized agent of the Government, we think the contractor is not entitled to extra compensation therefor.

Finding no error in the proceedings of the Court of Claims, its decision is

Affirmed.

No. 571.
Wesley E. Travis, App't.
v.
The United States.
Appeal from Court of Claims

Mr. Justice DAY delivered the opinion of the Court.

This case was argued with *Slavens* v. *The United States*, No. 228, just decided. It involves the same question as to the right of the Postmaster General to terminate a mail contract. The Court of Claims dismissed the petition. (38 Ct. of Clms. 590.) For the reasons stated in the opinion in the Slavens case, the judgment of the Court of Claims is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.